The YouTube channel "City of Franklin WI" will be live streaming the Common Council meeting so that the public will be able to view and listen to the meeting.
https://www.youtube.com/c/CityofFranklinWIGov

CITY OF FRANKLIN
COMMON COUNCIL MEETING*
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN
AGENDA
TUESDAY JUNE 17, 2025 AT 6:30 P.M.

A. Call to Order, Roll Call and Pledge of Allegiance.

B. 1. Citizen Comment Period.
2. Mayoral Announcements:
(a) Proclamation Honoring Eagle Scout Henry Bannier.
(b) Proclamation Honoring Eagle Scout Ivan Bannier.

C. Approval of Minutes: Regular Common Council Meeting of June 3, 2025.

D. Hearings.

E. Organizational.

F. Letters.

G. Reports and Recommendations:
1. Consent Agenda:
(a) A Resolution approving the Wisconsin Department of Natural Resources NR-208 Compliance Maintenance Report for Year 2024.
(b) Request Council Approval to accept $2,000 in public donations and to apply this and future donations towards establishing Automated External Defibrillators (AED's) within the City of Franklin Parks.
(c) Request Council Approval to accept $2,300.00 in donations and to spend the donation on tables for the Franklin Fire Department's training room.
(d) A Resolution Approving a Partial Property Tax Rescission and Refund for TKN 801-0086-000.
(e) A Resolution Approving a Partial Property Tax Rescission and Refund for TKN 796-0059-000.
(f) A Resolution Approving a Partial Property Tax Rescission and Refund for TKN 796-0074-000.
(g) A Resolution Approving a Partial Property Tax Rescission and Refund for TKN 796-0075-000.
(h) A Resolution Approving a Partial Property Tax Rescission and Refund for TKN 807-0106-000.
2. An Ordinance to Repeal Chapter 167 Sex Offenders and Recreate Chapter 167 Entitled Sex Offender Residency Restrictions and Child Safety Zones, of the Municipal Code of Franklin, Wisconsin.

3. A Resolution to Waive Floodplain Land Use Permit Filing Fees for Specific Properties.
4. An Ordinance to amend the Municipal Code as it pertains to the Architectural Review Board.
5. A Resolution to ratify and re-approve Resolution No. 2024-8084, a resolution conditionally approving a 1 lot Certified Survey Map, being a redivision of Lot 2, Certified Survey Map No. 8318, Outlot 1 of Certified Survey Map No. 6313, and Outlot 1 of Certified Survey Map No. 5401 and lands all being part of the Northwest 1/4 of the Northwest 1/4 of Section 10, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin (by Poths General LLC, applicant, Initech LLC, property owner) (approximately 7154 S. 76th Street).
6. An Ordinance to amend Ordinance No. 2023-2546, an Ordinance creating Section 15-3.0447 of the Franklin Unified Development Ordinance establishing Planned Development District No. 42 (Poths General) (approximately 7154 S. 76th Street).
7. A Resolution Authorizing the Director of Administration to Execute a Statement of Work with TransUnion for Cyber Security Incident Notification and Identity Protection Services.
8. Authorize a Professional Services Agreement Between the City of Franklin and Secure Compliance Solutions, LLC (SCS) to Provide External and Internal Penetration Testing and Reporting Services—Funded by Account Number 01-0144-5299.
9. An Ordinance to amend Ordinance 2024-2649, an Ordinance adopting the 2025 Annual Budget for the General Fund to Provide Additional Planning Department Subscriptions Appropriations to Support the UDO Enhanced Graphics Proposal.
10. A Resolution Designating an Interim Deputy Treasurer for the City of Franklin.
11. A Resolution Designating Signatures for Checks and Orders Pursuant to Section 66.0607 Wisconsin Statutes.
12. City of Franklin's Community Development Block Grant Program Projects for 2026.
13. A Resolution Authorizing the Installation of a Fence Within the south 20-foot Storm Sewer Easement Upon Lot 140 in Imperial Heights Addition No. 5, being a subdivision of parts of the SW 1/4 of the NW 1/4 of Section 13, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin (8155 S. 42nd St.) (TKN 808 0145 000) (Chad & Jennifer van Dernoot, Applicant).
14. A Resolution Authorizing the Installation of a Fence Within the 30 Foot Private Planting Screen Plat Restriction, Upon Lot 74 of Willow Pointe Estates Addition No. 4 Subdivision (8820 W. Whispering Oaks Court) (Superior Fence and Rail of Milwaukee, Applicant).
15. Public Water Supply to the Village of Raymond. The Common Council may enter closed session pursuant to Wis. Stat §19.85(1)(e) to deliberate upon information, terms and provisions of the City of Franklin potential provision of public water supply to the Village of Raymond, the potential negotiation of terms in relation thereto, including, but not limited to potential agreement terms for the provision of the public water supply, and potential agreement terms with relation to the public

infrastructure work to provide such public water supply, and the investing of public funds and governmental actions in relation thereto, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

16. Potential commercial/industrial/manufacturing development(s) and proposal(s) and potential development(s) agreement(s) in relation thereto for, including, but not limited to properties in the southeast corner of South 76th Street and West Rawson Avenue. The Common Council may enter closed session pursuant to Wis. Stat. § 19.85(1)(e), for market competition and bargaining reasons, to deliberate and consider terms relating to potential commercial/industrial/manufacturing development(s) and proposal(s) and the investing of public funds and governmental actions in relation thereto and to affect such development(s), including the terms and provisions of potential development agreement(s) for, including, but not limited to the propert(ies) at the southeast corner of South Oakwood Park Drive and West Ryan Road, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

17. Potential Acquisition of the Property at 9371 W. Loomis Road (TKN 801-9995-000; 1.565 acres) and the Property Adjacent Thereto (TKN 801-9996-000; 3.629 acres) for Public Services Use(s) and Public Facilities Purposes. The Common Council may enter closed session pursuant to Wis. Stat. § 19.85(1)(e), for competitive and bargaining reasons, to consider the potential acquisition of the property at 9371 W. Loomis Road (TKN 801-9995-000; 1.565 acres) and the property adjacent thereto (TKN 801-9996-000; 3 629 acres)for public services use(s) and public facilities purposes, and the negotiating of the purchase and the investing of public funds with regard to the potential acquisition thereof, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

H. Licenses and Permits: License Committee Meeting of June 17, 2025.

I. Bills.

Request for Approval of Vouchers and Payroll.

J. Adjournment.

*Supporting documentation and details of these agenda items are available at City Hall during normal business hours

[Note Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services For additional information, contact the City Clerk's office at (414) 425-7500]

REMINDERS:

June 19	Plan Commission	6:00 p.m.
July 1	Common Council	6:30 p.m.
July 4	City Hall Closed-Fourth of July	

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B.2.(a).

City of Franklin Proclamation

CERTIFICATE OF ACHIEVEMENT

HENRY BANNIER

Whereas, the development of our youth, both boys and girls is greatly enhanced by active participation in scouting; and

Whereas, Henry Bannier by study, hard work and perseverance, has successfully progressed through various ranks in scouting; and

Whereas, such dedication and perseverance has resulted in Henry Bannier earning the highest award in scouting that of Eagle Scout; and

Whereas, Henry Bannier's achievement has broadened his knowledge and experience and will help him in all of his future endeavors; and

Whereas, Henry Bannier's parents, his scouting leaders, friends, and the community are proud of his achievement.

NOW, THEREFORE, I, Mayor John R. Nelson present this Certificate of Achievement to Henry Bannier on the occasion of him becoming an Eagle Scout and ask all residents of Franklin to join me in congratulating Henry Bannier on this outstanding achievement.

Dated this 17th day of June, 2025 in Franklin, Wisconsin.

John R. Nelson, Mayor

B.2.(b).

City of Franklin Proclamation

CERTIFICATE OF ACHIEVEMENT

IVAN BANNIER

Whereas, the development of our youth, both boys and girls is greatly enhanced by active participation in scouting; and

Whereas, Ivan Bannier by study, hard work and perseverance, has successfully progressed through various ranks in scouting; and

Whereas, such dedication and perseverance has resulted in Ivan Bannier earning the highest award in scouting that of Eagle Scout; and

Whereas, Ivan Bannier's achievement has broadened his knowledge and experience and will help him in all of his future endeavors; and

Whereas, Ivan Bannier's parents, his scouting leaders, friends, and the community are proud of his achievement.

NOW, THEREFORE, I, Mayor John R. Nelson present this Certificate of Achievement to Ivan Bannier on the occasion of him becoming an Eagle Scout and ask all residents of Franklin to join me in congratulating Ivan Bannier on this outstanding achievement.

Dated this 17th day of June, 2025 in Franklin, Wisconsin.

John R. Nelson, Mayor

C.

CITY OF FRANKLIN
COMMON COUNCIL MEETING
JUNE 3, 2025
MINUTES

ROLL CALL	A	The regular meeting of the Franklin Common Council was held on June 3, 2025, and was called to order at 6 30 p m by Mayor John R Nelson in the Franklin City Hall Council Chambers, 9229 W Loomis Road. Franklin, Wisconsin On roll call, the following were present Alderman Peccarelli, Alderwoman Eichmann, Alderman Hasan, Alderman Salous and Alderman Craig Alderwoman Day was absent Also in attendance were Director of Administration Kelly Hersh, City Attorney Jesse A Wesolowski and City Clerk Shirley Roberts
CITIZEN COMMENT	B	Citizen comment period was opened at 6 30 p m and was closed at 6 45 p m
MINUTES MAY 20, 2025	C	Alderman Hasan moved to approve the minutes of the Common Council meeting of May 20, 2025, as presented Seconded by Alderman Salous All voted Aye, motion carried
MAYORAL APPOINTMENTS	E	Alderwoman Eichmann moved to confirm the following Mayoral Appointments 1 Ann Adamski, 7825 S Stonebrook Ct , Ald Dist 3-Civic Celebrations Commission (3 year term expiring 06/30/28) 2 Christopher Doll, 9949 S 31st St , Ald Dist 4-Library Board (3 year term expiring 06/30/28) 3 Lisa Marie Fallico, 11343 W Mayers Dr , Ald Dist 6-Civic Celebrations Commission (3 year unexpired term expiring 06/30/27) 4 Cathleen Richard, 10252 W Deerwood Ln , Ald Dist 6-Economic Development Commission (1 year term expiring 06/30/26) 5 Judith Williams-Killackey, 4901 W. Forest Hill Ave , Ald Dist 5-Library Board (3 year term expiring 06/30/28) Seconded by Alderman Hasan On roll call, all voted Aye Motion carried
RES 2025-8327 SPECIAL ASSESSMENT WATER MAIN – SOUTH LOVERS LANE ROAD, HERDA PLACE, PHYLLIS LANE	G 1	Alderman Hasan moved to adopt Resolution No 2025-8327, A PRELIMINARY RESOLUTION DECLARING INTENT TO EXERCISE SPECIAL ASSESSMENT POWERS GRANTED BY SECTION 207-15 OF THE MUNICIPAL CODE AND SECTION 66 0701 OF THE STATE STATUTES FOR INSTALLATION OF A WATER MAIN ON THE EAST FRONTAGE ROAD OF SOUTH LOVERS LANE ROAD FROM A POINT OF CONNECTION AT THE INTERSECTION OF WEST HERDA PLACE TO A POINT OF CONNECTION AT

THE INTERSECTION OF SOUTH PHYLLIS LANE AND SETTING THE PUBLIC HEARING DATE FOR JULY 1, 2025, AT 6 30 P M Seconded by Alderman Salous All voted Aye, motion carried

Alderwoman Day arrived at 6 51 p m

RES 2025-8328 DEPARTMENT OF TRANSPORTATION PROJECT AMOUNT INCREASE – S LOVERS LANE, W ST MARTINS ROAD, AND W RAWSON AVE

G 2 Alderwoman Eichmann moved to adopt Resolution No 2025-8328, A RESOLUTION TO SUPERSEDE A STATE/MUNICIPAL FINANCIAL AGREEMENT FOR IMPROVEMENTS RELATED TO A WISCONSIN DEPARTMENT OF TRANSPORTATION PROJECT ON SOUTH LOVERS LANE (USH 45) FROM WEST ST MARTINS ROAD TO WEST RAWSON AVENUE (CTH BB) AND INCREASE THE AMOUNT TO $502,500, subject to technical corrections by the City Attorney Seconded by Alderman Hasan All voted Aye, Alderwoman Day Abstained Motion carried

RES 2025-8329 TRANSPORTATION ALTERNATIVES PROGRAM PROJECT FOR WEST PUETZ ROAD PATHWAY

G 3 Alderwoman Eichmann moved to adopt Resolution No 2025-8329, A RESOLUTION TO SUPERSEDE A STATE/MUNICIPAL FINANCIAL AGREEMENT FOR AN INFRASTRUCTURE TRANSPORTATION ALTERNATIVES PROGRAM (TAP) PROJECT FOR WEST PUETZ ROAD PATHWAY IN THE AMOUNT OF $440,000, subject to technical corrections by the City Attorney Seconded by Alderwoman Day All voted Aye, motion carried

RES 2025-8330 STORM WATER MANAGEMENT FOR RIDGEWOOD RESERVE SUBDIVISION

G 4 Alderwoman Eichmann moved to adopt Resolution No 2025-8330, A RESOLUTION FOR ACCEPTANCE OF A STORM WATER FACILITY MAINTENANCE AGREEMENT AND STORM WATER MANAGEMENT ACCESS FOR RIDGEWOOD RESERVE SUBDIVISION (CREATIVE HOMES, INC) Seconded by Alderman Hasan All voted Aye, motion carried

RES 2025-8331 STORM DRAINAGE EASEMENT FOR RIDGEWOOD RESERVE SUBDIVISION

G 5 Alderwoman Eichmann moved to adopt Resolution No 2025-8331, A RESOLUTION ACCEPTANCE OF STORM DRAINAGE EASEMENT FOR RIDGEWOOD RESERVE SUBDIVISION Seconded by Alderman Hasan All voted Aye, motion carried

RES 2025-8332 SANITARY SEWER EASEMENT FOR RIDGEWOOD RESERVE SUBDIVISION

G 6 Alderwoman Eichmann moved to adopt Resolution No 2025-8332, A RESOLUTION TO ACCEPT A SANITARY SEWER EASEMENT FOR RIDGEWOOD RESERVE SUBDIVISION Seconded by Alderman Hasan All voted Aye, motion carried

RES 2025-8333 CONSERVATION EASEMENT 0 S 92ND ST	G 7	Alderman Hasan moved to adopt Resolution No 2025-8333, A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A CONSERVATION EASEMENT FOR DAMIAN PRZYBYLO AT 0 S 92ND STREET (TKN 886-9987-002) Seconded by Alderman Salous All voted Aye, motion carried
ORD 2025-2685 AMEND ORDINANCE 2024-2649 FOR FRANKLIN HEALTH DEPARTMENT EXPENSES	G 8	Alderman Hasan moved to adopt Ordinance No 2025-2685, AN ORDINANCE TO AMEND ORDINANCE 2024-2649, AN ORDINANCE ADOPTING THE 2025 ANNUAL BUDGETS FOR THE OPIOID SETTLEMENT FUND TO PROVIDE PERSONNEL AND NON-PERSONNEL APPROPRIATIONS FOR ELIGIBLE EXPENSES BY THE FRANKLIN HEALTH DEPARTMENT Seconded by Alderman Craig All voted Aye, motion carried
RES 2025-8334 NATIONAL OPIOID SETTLEMENT FUNDS FRANKLIN HEALTH DEPARTMENT	G 9	Alderwoman Day moved to adopt Resolution No 2025-8334, A RESOLUTION AUTHORIZING THE FRANKLIN DIRECTOR OF FINANCE/TREASURER TO APPROPRIATE THE TOTALITY OF NATIONAL OPIOID SETTLEMENT FUNDS RECEIVED TO THE FRANKLIN HEALTH DEPARTMENT TO ADDRESS THE OPIOID EPIDEMIC Seconded by Alderman Hasan All voted Aye, motion carried
ORD 2025-2686 FUNDS FOR THE ALLIANCE FOR WISCONSIN YOUTH MINI GRANT	G 10	Alderwoman Day moved to adopt Ordinance No 2025-2686, AN ORDINANCE TO AMEND ORDINANCE 2024-2649, AN ORDINANCE ADOPTING THE 2025 ANNUAL BUDGET FOR THE HEALTH GRANT FUND TO PROVIDE RESOURCES AND APPROPRIATIONS FOR THE APPROVED 2024-2025 ALLIANCE FOR WISCONSIN YOUTH MINI GRANT Seconded by Alderman Craig All voted Aye, motion carried
RES 2025-8335 EXTENSION OF SPECIAL USE FOR LAKE GROVE PLACE -3709 W COLLEGE AVE	G 11	Alderman Hasan moved to adopt Resolution No 2025-8335, A RESOLUTION TO EXTEND FOR ONE (1) YEAR RESOLUTION NO 2024-8153, A RESOLUTION IMPOSING CONDITIONS AND RESTRICTIONS FOR THE APPROVAL OF A SPECIAL USE FOR LAKE GROVE PLACE, A MULTI-FAMILY DEVELOPMENT WITH 38 DWELLING UNITS UPON PROPERTY LOCATED AT APPROXIMATELY 3709 W COLLEGE AVENUE (SAFARI HOMES FRANKLIN LLC) Seconded by Alderwoman Day All voted Aye, motion carried
RES 2025-8336 SPECIAL USE FOR TSUNAMI EXPRESS CAR WASH 6449 S WHITNALL EDGE ROAD	G 12	Alderman Craig moved to adopt Resolution No 2025-8336, A RESOLUTION TO AMEND RESOLUTION NO 2024-8222 IMPOSING CONDITIONS AND RESTRICTIONS FOR THE APPROVAL OF A SPECIAL USE FOR TSUNAMI EXPRESS CAR WASH, A CAR WASH FACILITY LOCATED AT 6449 S

WHITNALL EDGE ROAD (TSUNAMI EXPRESS CAR WASH FRANKLIN LLC, APPLICANT). Seconded by Alderwoman Eichmann. All voted Aye; motion carried.

RES. 2025-8337
SPECIAL USE AUTO SUPPLY STORE 7251 S 27TH ST

G.13. Alderman Salous moved to adopt Resolution No. 2025-8337, A RESOLUTION IMPOSING CONDITIONS AND RESTRICTIONS FOR THE APPROVAL OF A SPECIAL USE FOR AN AUTO SUPPLY STORE USE UPON PROPERTY LOCATED AT 7251 S. 27TH STREET, (O'REILLY AUTOMOTIVE STORES INC., APPLICANT & PROPERTY OWNER). Seconded by Alderman Hasan. All voted Aye; motion carried.

PROMOTION OF MR. JOE CHITKO TO FACILITIES MAINTENANCE SUPERINTENDENT AND RELATED BENEFIT ADJUSTMENTS

G.14. Alderman Hasan moved to authorize the promotion of Mr. Joe Chitko to Facilities Maintenance Superintendent with an annual salary of $72,780 effective upon the departure of Mr. Joe Wilson; to approve the continuation of Mr. Chitko's eligibility in the Defined Benefit Pension Plan until separation from employment; and to grandfather Mr. Chitko into the retiree health insurance eligibility criteria of age 60 with 15 years of service consistent with historical department of public works policy. Seconded by Alderman Craig. All voted Aye; motion carried.

RES. 2025-8338
GREEN INFRASTRUCTURE FUNDING AGREEMENT MMSD

G.15. Alderwoman Day moved to adopt Resolution No. 2025-8338, A RESOLUTION AUTHORIZING EXECUTION OF GREEN INFRASTRUCTURE FUNDING AGREEMENTS WITH THE MILWAUKEE METROPOLITAN SEWERAGE DISTRICT FOR THE 2025 GREEN SOLUTIONS PROGRAM. Seconded by Alderwoman Eichmann. On roll call, all voted Aye. Motion carried.

RES. 2025-8339
AMEND RESOLUTION NO. 2015-7096 TO PROVIDE ADDITIONAL POLICY AND PROCEDURE GUIDELINES

G.16. Alderman Craig moved to adopt Resolution No. 2025-8339, A RESOLUTION TO AMEND RESOLUTION NO. 2015-7096, A RESOLUTION TO ADOPT PURCHASING CARD POLICIES AND PROCEDURES FOR THE CITY OF FRANKLIN AND PROVIDE ADDITIONAL POLICY AND PROCEDURE GUIDELINES, subject to technical changes by City Attorney and Director of Finance and Treasurer. Seconded by Alderman Hasan. All voted Aye; motion carried.

RES. 2025-8340
TAX RESCISSION AND REFUND FOR TKN 832-9925-001

G.17. Alderman Hasan moved to adopt Resolution No. 2025-8340, A RESOLUTION APPROVING A PARTIAL PROPERTY TAX RESCISSION AND REFUND FOR TKN 832-9925-001, and direct staff to directly refund the original property owner. Seconded by Alderman Craig. All voted Aye; motion carried.

RES 2025-8341 TAX RESCISSION AND REFUND FOR TKN 928-1022-000	G 18	Alderman Hasan moved to adopt Resolution No 2025-8341, A RESOLUTION APPROVING A PARTIAL PROPERTY TAX RESCISSION AND REFUND FOR TKN 928-1022-000, and direct staff to file the charge back request with the Department of Revenue to seek compensation from the other taxing authorities Seconded by Alderman Craig All voted Aye, motion carried
ORD 2025-2687 AMEND ORDINANCE 2024-2649 TRANSFER PAYMENTS TO THE SENIOR CITIZEN TRAVEL	G 19	Alderwoman Eichmann moved to adopt Ordinance No 2025-2687, AN ORDINANCE TO AMEND ORDINANCE 2024-2649, AN ORDINANCE ADOPTING THE 2025 ANNUAL BUDGETS FOR THE GENERAL FUND TO TRANSFER $10,000 OF SEVERANCE PAYMENTS APPROPRIATIONS TO THE SENIOR CITIZEN TRAVEL PROGRAM Seconded by Alderman Hasan All voted Aye, motion carried
OPEN RECORDS REQUESTS	G 20	Alderwoman Eichmann moved to place on file Seconded by Alderman Hasan All voted Aye, motion carried
CLOSED SESSION ANDREW PELKEY OPEN RECORDS REQUEST FOR PUBLIC RECORDS RELATED TO COMMON COUNCIL CONSIDERATION	G 21	Alderwoman Eichmann moved to enter closed session at 8 17 p m pursuant to Wis Stat § 19 85(l)(f), considering financial, medical, social, or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations, and public records in relation thereto and Wis Stat § 905 03 Lawyer-Client Privilege and Wis Stat § 19 35 (1) Right to Inspection, with regard to the Andrew Pelkey open records request, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate Seconded by Alderman Salous On roll call, Alderwoman Eichmann, Alderman Hasan, Alderwoman Day and Alderman Salous voted Aye Alderman Peccarelli and Alderman Craig voted No Motion carried Mayor Nelson called a recess at 8 17 p m Mayor Nelson reconvened at 8 25 p m Upon reentering open session at 9 04 p m., Alderwoman Eichmann moved to release records discussed in closed session subject to notice requirements under 19 356 of the Wisconsin Statues Seconded by Alderman Hasan On roll call, all voted Aye Motion carried

CLOSED SESSION POTENTIAL DEVELOPMENTS, PROPOSALS, AND AGREEMENTS AT THE SOUTHWEST CORNER OF SOUTH OAKWOOD PARK DRIVE AND WEST RYAN ROAD	G 22	Alderwoman Eichmann moved to enter closed session at 9 06 p m pursuant to Wis Stat § 19 85(1)(e), for market competition and bargaining reasons, to deliberate and consider terms relating to potential commercial/industrial/manufacturing developments(s) and proposals(s) and the investing of public funds and governmental actions in relation thereto and to effect such development(s), including the terms and provisions of potential development agreement(s) for, including, but not limited to the propert(ies) at the southeast corner of South Oakwood Park Drive and West Ryan Road, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate Seconded by Alderman Salous On roll call, all voted Aye Motion carried Upon reentering open session at 9 15 p m , no action was taken
MISCELLANEOUS LICENSES	H	Alderwoman Eichmann moved to approve the following licenses of the License Committee Meeting of June 3, 2025 Alderwoman Eichmann moved to approve the ROC Ventures – Fireworks post Milkmen Games – 2025 for 07/18/25 (The 07/18/25 date was on the original application, but was inadvertently missed by the clerk`s office) Seconded by Alderwoman Day On roll call, Alderman Salous, Alderwoman Day, Alderman Hasan, Alderwoman Eichmann and Alderman Peccarelli voted Aye, Alderman Craig voted No Motion carried Grant Extraordinary Entertainment & Special Event and Temporary Class B Beer Pending of COI to Xaverian Missionaries-Annual Festival, Fr Alejandro Rodriguez, Xaverian Missionaries, 4500 W Xavier Dr, 6/21-6/22/25, Grant New 2025-26 Operator License to· Danielle Biersack, Glen Cole, Milan Djurina, Gloria Grabarczyk, Caroline Wayer, Grant New 2025-26 Operator License Pending Update of Application to Brennen Domenget & Richard Bradley, Grant Renewal 2025-26 Operator License to Allison Anderson, Kayla Begley, Judith Burbey, Charleen Cassidy, Matthew Christman, Oskar Gonzalez, Amber Helm, Barbara Hughes, Lori Kochan, Mark Leto, Amber McCall, Richard Neumann, Nithin Pampati, Tarhemen Raines-Bass, Nicholas Schneider, Jaskiran Singh, Jessica St Louis, Elizabeth Stroh, Kathryn Theis, Clarissa Tiedke, Denise Widenski, Julie Wiltzius, Grant 2025-26 Renewal Operator License Pending Update of Application to Richard Bradley, Alec Gilbert, Halina Grochowski, Grant 2025-26 Day Care License Pending list of Staff to Kindercare Learning Centers LLC, DBA Falk Park KinderCare Learning Center, 7363 S 27th St, Michelle Swikert,

Grant Temporary "Class B" Wine License to Franklin Lioness Lions Club, St Martin's Labor Day Fair, Gloria Grabarczyk, 8/31-9/1/25, St Martins Rd & Church St, and
Grant Temporary Entertainment & Amusement to Franklin Place Memory Care, Shelly Mrozinski & Brandon Van Vors, Franklin Place Car Show, 9201 W Drexel Ave, 6/7/25, 10 00 a m - 2 00 p m

Seconded by Alderman Craig All voted Aye, motion carried

VOUCHERS AND PAYROLL	I	Alderman Craig moved to approve City vouchers with an ending date of May 29, 2025 in the amount of $2,346,817 60, and payroll dated May 30, 2025 in the amount of $474,328 12 and payments of the various payroll deductions in the amount of $507,035 80 plus City matching payments, and estimated payroll dated June 13, 2025 in the amount of $444,000 00 and payments of the various payroll deductions in the amount of $263,000, plus City matching payments Seconded by Alderman Hasan On roll call, all voted Aye Motion carried
ADJOURNMENT	J	Alderman Hasan moved to adjourn the meeting of the Common Council at 9 22 p m Seconded by Alderman Craig All voted Aye, motion carried

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 6/17/25
REPORTS AND RECOMMENDATIONS	A Resolution Approving the Wisconsin Department of Natural Resources NR-208 Compliance Maintenance Report for 2024	ITEM NUMBER G. 1. (a).

Each year the City is required to file a Compliance Maintenance Annual Report with the Wisconsin Department of Natural Resources Wisconsin Administrative Code Chapter NR 208 is more commonly known as the Compliance Maintenance Annual Report (CMAR) Rule for publicly and privately-owned domestic wastewater treatment works The CMAR is a self-evaluation tool that promotes the owner's awareness and responsibility for wastewater collection and treatment needs, measures the performance of a wastewater treatment works during a calendar year, and assesses the level of compliance with permit requirements Attached is the 2024 Annual Report

It is important to meet the stipulation from the DNR that this report be filed electronically on or before June 30, 2025 The report requires approval by the governing body and such resolution is attached

COUNCIL ACTION REQUESTED

Motion to adopt a Resolution Approving the Wisconsin Department of Natural Resources NR-208 Compliance Maintenance Report for Year 2024

S&W Utility/GB

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO 2025-

A RESOLUTION APPROVING THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES NR-208 COMPLIANCE MAINTENANCE REPORT FOR YEAR 2024

WHEREAS, it is a requirement under a Wisconsin Pollutant Discharge Elimination System (WPDES) permit issued by the Wisconsin Department of Natural Resources to file a Compliance Maintenance Annual Report (CMAR) for its wastewater collection system under Wisconsin Administrative Code NR 208,

WHEREAS, it is necessary to acknowledge that the governing body has reviewed the Compliance Maintenance Annual Report (CMAR), and

WHEREAS. it is necessary to provide recommendations or an action response plan for all individual CMAR section grades (of "C" or less) and/or an overall grade point average (<3 00)

BE IT THEREFORE RESOLVED by the Common Council of City of Franklin that the following recommendations or actions will be taken to address or correct problems/deficiencies of the wastewater treatment or collection system as identified in the Compliance Maintenance Annual Report (CMAR)

(1) Continue to identify inflow and infiltration (I & I) to the City's sanitary sewer system and take action to eliminate all I & I detected

(2) Continue the City record of having no bypasses or overflow

INTRODUCED at a regular meeting of the Common Council of the City of Franklin this 17th day of June. 2025 by Alderman _____

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 17th day of June, 2025

APPROVED

_____
John R Nelson, Mayor

ATTEST

_____
Shirley J Roberts, City Clerk

AYES NOES ABSENT

Compliance Maintenance Annual Report

Franklin Sewage Collection System | Last Updated: 6/9/2025 | Reporting For: **2024**

Financial Management

1. Provider of Financial Information

Name: Tom Bakalarski

Telephone: 414-427-7513 (XXX) XXX-XXXX

E-Mail Address (optional): tbakalarski@franklinwi.gov

2. Treatment Works Operating Revenues

2.1 Are User Charges or other revenues sufficient to cover O&M expenses for your wastewater treatment plant AND/OR collection system ?

- ● Yes (0 points) ☐☐
- ○ No (40 points)

If No, please explain:

2.2 When was the User Charge System or other revenue source(s) last reviewed and/or revised?

Year: 2024

- ● 0-2 years ago (0 points) ☐☐
- ○ 3 or more years ago (20 points)☐☐
- ○ N/A (private facility)

0

2.3 Did you have a special account (e.g., CWFP required segregated Replacement Fund, etc.) or financial resources available for repairing or replacing equipment for your wastewater treatment plant and/or collection system?

- ● Yes (0 points)
- ○ No (40 points)

REPLACEMENT FUNDS [PUBLIC MUNICIPAL FACILITIES SHALL COMPLETE QUESTION 3]

3 Equipment Replacement Funds

3.1 When was the Equipment Replacement Fund last reviewed and/or revised?

Year: 2024

- ● 1-2 years ago (0 points)☐☐
- ○ 3 or more years ago (20 points)☐☐
- ○ N/A

If N/A, please explain:

3.2 Equipment Replacement Fund Activity

3.2.1 Ending Balance Reported on Last Year's CMAR		$ 429,113.00
3.2.2 Adjustments - if necessary (e.g. earned interest, audit correction, withdrawal of excess funds, increase making up previous shortfall, etc.)	-	$ 9,319.00
3.2.3 Adjusted January 1st Beginning Balance		$ 419,794.00
3.2.4 Additions to Fund (e.g. portion of User Fee, earned interest, etc.)	+	$ 0.00

Compliance Maintenance Annual Report

Franklin Sewage Collection System

Last Updated: 6/9/2025 Reporting For: **2024**

3.2.5 Subtractions from Fund (e.g., equipment replacement, major repairs - use description box 3.2.6.1 below*) - $ 0.00

3.2.6 Ending Balance as of December 31st for CMAR Reporting Year $ 419,794.00

All Sources: This ending balance should include all Equipment Replacement Funds whether held in a bank account(s), certificate(s) of deposit, etc.

3.2.6.1 Indicate adjustments, equipment purchases, and/or major repairs from 3.2.5 above.

3.3 What amount should be in your Replacement Fund? $ 419,794.00 **0**

Please note: If you had a CWFP loan, this amount was originally based on the Financial Assistance Agreement (FAA) and should be regularly updated as needed. Further calculation instructions and an example can be found by clicking the SectionInstructions link under Info header in the left-side menu.

3.3.1 Is the December 31 Ending Balance in your Replacement Fund above, (#3.2.6) equal to, or greater than the amount that should be in it (#3.3)?

- ● Yes
- ○ No

If No, please explain.

4 Future Planning

4.1 During the next ten years, will you be involved in formal planning for upgrading, rehabilitating, or new construction of your treatment facility or collection system?

- ○ Yes - If Yes, please provide major project information, if not already listed below.☐☐
- ● No

Project #	Project Description	Estimated Cost	Approximate Construction Year
1	We will be inspecting and improving force mains when needed, Lift station improvements and or replacement, Maintaining existing system MH hole rehabilitation Continuing working on II improvements.	$175,000	2017
2	We will be inspecting and improving force mains when needed, Lift station improvements and or replacement, Maintaining existing system MH hole rehabilitation Continuing working on II improvements.	$175,000	2018
3	upgrading pumping equipment & piping @ St Martins's lift station and continuation of Man Hole rehabilitation & improving force mains when needed.	$30,000	2019
4	New installation of lift Station and force main at the New S/E Hickory Street Business Park.	$4,200	2020
5	Upgrading of SCADA system	$10,000	2021
6	Replacement of the Industrial Park IP lift Station.	$3,200,000	2021
7	We will be inspecting and improving force mains when needed, Lift station improvements and or replacement, Maintaining existing system MH hole rehabilitation Continuing working on II improvements	$180,000	2021
8	We will be inspecting and improving force mains when needed, Lift station improvements and or replacement, Maintaining existing system MH hole rehabilitation Continuing working on II improvements	$140,000	2022
9	updating/upgrading SCADA	$15,000	2022
10	Pump addition and MCC panel upgrades to the Saint Martins lift station	$250,000	2026

5. Financial Management General Comments

Compliance Maintenance Annual Report

Franklin Sewage Collection System

Last Updated: 6/9/2025 Reporting For: **2024**

ENERGY EFFICIENCY AND USE

6. Collection System

6.1 Energy Usage

6.1.1 Enter the monthly energy usage from the different energy sources:

COLLECTION SYSTEM PUMPAGE: Total Power Consumed

Number of Municipally Owned Pump/Lift Stations: 5

	Electricity Consumed (kWh)	Natural Gas Consumed (therms)
January	21,148	356
February	20,135	269
March	18,409	209
April	22,926	51
May	15,214	3
June	15,418	6
July	14,156	22
August	11,767	4
September	10,335	3
October	9,294	56
November	10,287	271
December	13,016	400
Total	**182,105**	**1,650**
Average	**15,175**	**138**

6.1.2 Comments:

6.2 Energy Related Processes and Equipment

6.2.1 Indicate equipment and practices utilized at your pump/lift stations (Check all that apply):

- ☒ Comminution or Screening
- ☐ Extended Shaft Pumps
- ☒ Flow Metering and Recording
- ☐ Pneumatic Pumping
- ☒ SCADA System
- ☒ Self-Priming Pumps
- ☒ Submersible Pumps
- ☒ Variable Speed Drives
- ☐ Other:

6.2.2 Comments:

6.3 Has an Energy Study been performed for your pump/lift stations?

- ○ No

Compliance Maintenance Annual Report

Franklin Sewage Collection System

Last Updated: 6/9/2025 Reporting For: **2024**

● Yes

Year: 2023

By Whom: Johnson Controls

Describe and Comment:

As equipment needs to be replaced we will upgrade to more efficient products.

6.4 Future Energy Related Equipment

6.4.1 What energy efficient equipment or practices do you have planned for the future for your pump/lift stations?

Replace aging pumps with newer more energy efficient pumps.

Total Points Generated	0
Score (100 - Total Points Generated)	100
Section Grade	**A**

Compliance Maintenance Annual Report

Franklin Sewage Collection System

Last Updated: 6/9/2025 Reporting For: **2024**

Sanitary Sewer Collection Systems

1. Capacity, Management, Operation, and Maintenance (CMOM) Program

1.1 Do you have a CMOM program that is being implemented?

- ● Yes
- ○ No

If No, explain:

1.2 Do you have a CMOM program that contains all the applicable components and items according to Wisc. Adm Code NR 210.23 (4)?

- ● Yes
- ○ No (30 points)
- ○ N/A

If No or N/A, explain:

1.3 Does your CMOM program contain the following components and items? (check the components and items that apply)

☒ Goals [NR 210.23 (4)(a)]

Describe the major goals you had for your collection system last year:

Training new staff in system operations, and keeping up to date on sewer cleaning.

Did you accomplish them?

- ● Yes
- ○ No

If No, explain:

☒ Organization [NR 210.23 (4) (b)]☐☐

Does this chapter of your CMOM include:

- ☒ Organizational structure and positions (eg. organizational chart and position descriptions)
- ☒ Internal and external lines of communication responsibilities
- ☒ Person(s) responsible for reporting overflow events to the department and the public

☒ Legal Authority [NR 210.23 (4) (c)]

What is the legally binding document that regulates the use of your sewer system?

City of Franklin codes chapter 297

If you have a Sewer Use Ordinance or other similar document, when was it last reviewed and revised? (MM/DD/YYYY) 2013-01-09

Does your sewer use ordinance or other legally binding document address the following.

- ☒ Private property inflow and infiltration
- ☒ New sewer and building sewer design, construction, installation, testing and inspection
- ☒ Rehabilitated sewer and lift station installation, testing and inspection
- ☒ Sewage flows satellite system and large private users are monitored and controlled, as necessary
- ☒ Fat, oil and grease control
- ☒ Enforcement procedures for sewer use non-compliance

☒ Operation and Maintenance [NR 210.23 (4) (d)]

Does your operation and maintenance program and equipment include the following:

- ☒ Equipment and replacement part inventories
- ☒ Up-to-date sewer system map
- ☒ A management system (computer database and/or file system) for collection system information for O&M activities, investigation and rehabilitation

Compliance Maintenance Annual Report

Franklin Sewage Collection System

Last Updated: 6/9/2025 Reporting For: **2024**

☒ A description of routine operation and maintenance activities (see question 2 below)
☒ Capacity assessment program
☒ Basement back assessment and correction
☒ Regular O&M training

☒ Design and Performance Provisions [NR 210.23 (4) (e)]☐☐

What standards and procedures are established for the design, construction, and inspection of the sewer collection system, including building sewers and interceptor sewers on private property?

☒ State Plumbing Code, DNR NR 110 Standards and/or local Municipal Code Requirements
☒ Construction, Inspection, and Testing
☐ Others:

☒ Overflow Emergency Response Plan [NR 210.23 (4) (f)]☐☐

Does your emergency response capability include:

☒ Responsible personnel communication procedures
☒ Response order, timing and clean-up
☒ Public notification protocols
☒ Training
☒ Emergency operation protocols and implementation procedures

☒ Annual Self-Auditing of your CMOM Program [NR 210.23 (5)]☐☐

☒ Special Studies Last Year (check only those that apply):

☒ Infiltration/Inflow (I/I) Analysis
☐ Sewer System Evaluation Survey (SSES)
☐ Sewer Evaluation and Capacity Managment Plan (SECAP)
☒ Lift Station Evaluation Report
☐ Others:

0

2. Operation and Maintenance

2.1 Did your sanitary sewer collection system maintenance program include the following maintenance activities? Complete all that apply and indicate the amount maintained.

Cleaning	18	% of system/year
Root removal	.1	% of system/year
Flow monitoring	1	% of system/year
Smoke testing	0	% of system/year
Sewer line televising	10	% of system/year
Manhole inspections	5	% of system/year
Lift station O&M	60	# per L.S./year
Manhole rehabilitation	2	% of manholes rehabbed
Mainline rehabilitation	0	% of sewer lines rehabbed
Private sewer inspections	0	% of system/year
Private sewer I/I removal	.8	% of private services

Compliance Maintenance Annual Report

Franklin Sewage Collection System

Last Updated: 6/9/2025 Reporting For: **2024**

River or water crossings: 0 % of pipe crossings evaluated or maintained

Please include additional comments about your sanitary sewer collection system below:

3. Performance Indicators

3.1 Provide the following collection system and flow information for the past year.

38.75	Total actual amount of precipitation last year in inches
34.57	Annual average precipitation (for your location)
200	Miles of sanitary sewer
5	Number of lift stations
0	Number of lift station failures
0	Number of sewer pipe failures
0	Number of basement backup occurrences
10	Number of complaints
.975	Average daily flow in MGD (if available)
34.75	Peak monthly flow in MGD (if available)
.184	Peak hourly flow in MGD (if available)

3.2 Performance ratios for the past year:

0.00	Lift station failures (failures/year)
0.00	Sewer pipe failures (pipe failures/sewer mile/yr)
0.00	Sanitary sewer overflows (number/sewer mile/yr)
0.00	Basement backups (number/sewer mile)
0.05	Complaints (number/sewer mile)
35.6	Peaking factor ratio (Peak Monthly:Annual Daily Avg)
0.2	Peaking factor ratio (Peak Hourly:Annual Daily Avg)

4. Overflows

LIST OF SANITARY SEWER (SSO) AND TREATMENT FACILITY (TFO) OVERFLOWS REPORTED **			
Date	Location	Cause	Estimated Volume
None reported			

** If there were any SSOs or TFOs that are not listed above, please contact the DNR and stop work on this section until corrected.

5. Infiltration / Inflow (I/I)

5.1 Was infiltration/inflow (I/I) significant in your community last year?

○ Yes
● No

If Yes, please describe:

5.2 Has infiltration/inflow and resultant high flows affected performance or created problems in your collection system, lift stations, or treatment plant at any time in the past year?

○ Yes
● No

If Yes, please describe:

Compliance Maintenance Annual Report

Franklin Sewage Collection System

Last Updated: 6/9/2025

Reporting For: **2024**

5.3 Explain any infiltration/inflow (I/I) changes this year from previous years:

There are no changes.

5.4 What is being done to address infiltration/inflow in your collection system?

Staff is using CCTV to look for infiltration and locations needing repair.

Total Points Generated	0
Score (100 - Total Points Generated)	100
Section Grade	**A**

Compliance Maintenance Annual Report

Franklin Sewage Collection System

Last Updated: 6/9/2025

Reporting For: **2024**

Grading Summary

WPDES No. 0047341

SECTIONS	LETTER GRADE	GRADE POINTS	WEIGHTING FACTORS	SECTION POINTS
Financial	A	4	1	4
Collection	A	4	3	12
TOTALS			**4**	**16**
GRADE POINT AVERAGE (GPA) = 4.00				

Notes:
A = Voluntary Range (Response Optional)
B = Voluntary Range (Response Optional)
C = Recommendation Range (Response Required)
D = Action Range (Response Required)
F = Action Range (Response Required)

Compliance Maintenance Annual Report

Franklin Sewage Collection System

Last Updated. 6/9/2025

Reporting For: **2024**

Resolution or Owner's Statement

Name of Governing Body or Owner: City Of Franklin

Date of Resolution or Action Taken: 2025-06-17

Resolution Number:

Date of Submittal:

ACTIONS SET FORTH BY THE GOVERNING BODY OR OWNER RELATING TO SPECIFIC CMAR SECTIONS (Optional for grade A or B. Required for grade C, D, or F):

Financial Management: Grade = A

Collection Systems: Grade = A

(Regardless of grade, response required for Collection Systems if SSOs were reported)

ACTIONS SET FORTH BY THE GOVERNING BODY OR OWNER RELATING TO THE OVERALL GRADE POINT AVERAGE AND ANY GENERAL COMMENTS

(Optional for G.P.A. greater than or equal to 3.00, required for G.P.A. less than 3.00)

G.P.A. = 4.00

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 6-17-25
REPORTS AND RECOMMENDATIONS	**Request Council Approval to accept $2,000 in public donations and to apply this and future donations towards establishing Automated External Defibrillators (AED's) within the City of Franklin Parks.**	ITEM NUMBER G. 1. (b).

Background:

The fire department has received a $2,000 donation from the Franklin Lions Club as part of a City-wide initiative to place Automated External Defibrillators (AEDs), with secure boxes, in City of Franklin Parks Additional funding commitments have been received from other vested businesses throughout the City of Franklin We are currently waiting for the other funds to be received while working towards more donations

All oversight of the AEDs would be the responsibility of the Franklin Fire Department, with all equipment and maintenance being funded through donations from stakeholders within the City of Franklin We currently have a collective vision of establishing this program as a City-wide initiative with the support of the Franklin Police Department/Dispatch, Health Department, Department of Public Works, Inspections Department, and City Development/Planning Department

The fire department is requesting Council approval to accept the donations and to spend the funding on AEDs, secure boxes, installation, and maintenance of the equipment and AEDs in the Parks Program

Financial Note:

With approval, funds will go into a designated budget line for incoming and outgoing funding of the AEDs in the Parks Program The fire department will work with the City Finance Department to establish the appropriate GL accounts

COUNCIL ACTION REQUESTED

Request Council Approval to accept $2,000 in public donations and to apply this and future donations towards establishing Automated External Defibrillators (AED's) within the City of Franklin Parks

Fire/JCM

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 6-17-25
REPORTS AND RECOMMENDATIONS	**Request Council Approval to accept $2,300.00 in donations and to spend the donation on tables for the Franklin Fire Department's training room.**	ITEM NUMBER G. 1.(c).

Background:

The fire department has received a donation from the Noon Lions Club, Lions Club, and Lioness Club as a collaborative effort to help the Franklin Fire Department secure tables for our training room These tables are utilized during our public education classes while also being used during department trainings and meetings

The department is requesting Council approval to accept the donations and to spend the funding on tables for the fire department's training room

Financial Note:

Funds will be deposited into line 28-0000-4746, with expenditures posted to line 28-0221-5328-7087

COUNCIL ACTION REQUESTED

Request Council Approval to accept a $2,300.00 in donations and to spend the donation on tables for the Franklin Fire Department's training room.

Fire/JCM

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE June 17, 2025
REPORTS & RECOMMENDATIONS	**A Resolution Approving a Partial Property Tax Rescission and Refund for Parcel #801-0086-000**	ITEM NUMBER G. 1.(a).

BACKGROUND

Per Wisconsin State Statutes, the removal of property taxes needs to be authorized by the Common Council. Statutes enumerate specific conditions under which a rescission/refund is appropriate and necessary. There is currently one property that was incorrectly assessed for the 2024 tax year. Due to a palpable error, the value has been reduced by $6,300.

ANALYSIS

Parcel: 801-0086-000
Owner: Neetu Jaitly
Address: 9436 W. Loomis Rd. Unit 5

Per the City's Assessor, the initial 2024 assessment was incorrect. The original sketch noted a full second floor in one area of the home, however it was corrected to a finished attic.

FISCAL NOTE

The impact of the above rescission/refund is likely a bad debt expense for the City in the amount of $102.23 There is a formal process that allows the City to notify the Department of Revenue (DOR) of rescissions in October of each year, and, as long as the total of all rescissions, for the tax year, for the City of Franklin, meet the statutory dollar threshold, $250 or more per any single property, the chargeback will be authorized, and the other taxing entities will be responsible for their share. Staff will not need to submit any documentation to the Department of Revenue due to the refund amount being below the statutory dollar threshold.

RECOMMENDATION

Staff recommends that Council authorize this resolution to partially rescind and refund the above noted taxes as outlined. Due to the 2024 property tax bill being paid in full, the $102.23 will be refunded back to the property owner.

COUNCIL ACTION REQUESTED

Motion to approve Resolution No. 2025-_____, A Resolution Approving a Partial Property Tax Rescission and Refund for Parcel #801-0086-000; and direct staff to directly refund the original property owner.

Finance Dept - DB

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO 2025-_____

RESOLUTION APPROVING A PARTIAL PROPERTY TAX RESCISSION AND REFUND FOR PARCEL #801-0086-000

WHEREAS, the following property taxes were assessed improperly, per Wisconsin State Statutes 74 33 (1) (a), which states that a clerical error has been made in the description of the property, and a partial rescission and refund of the tax due is appropriate

Neetu Jaitly
9436 W Loomis Rd Unit 5
Franklin, WI 53132
(Parcel #801-0086-000) $102 23

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, that the proper City Officials are hereby authorized and directed to rescind and refund to the property owner in the sum of $102 23, and

BE IT FURTHER RESOLVED, that the proper City shall have a bad debt expense in the amount of $102 23, pursuant to Wisconsin State Statutes 74 41, which has a $250 statutory threshold

Funds for this purpose are appropriated from the following Account Numbers

01-0000-1415	*Milwaukee County*	*$0 00*
01-0198-5543	*City of Franklin*	*$102 23*
01-0000-1412	*MATC*	*$0 00*
01-0000-1411	*Franklin School District*	*$0 00*
01-0000-1413	*MMSD*	*$0 00*

Resolution introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025

Passed at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025

APPROVED

_____
John R Nelson, Mayor

ATTEST

_____
Shirley J Roberts, City Clerk

AYES____NOES____ABSENT____

JAITLY, NEETU

STATE OF WISCONSIN
REAL ESTATE PROPERTY TAX BILL FOR 2024
CITY OF FRANKLIN
MILWAUKEE COUNTY

BILL NUMBER: 360403

IMPORTANT Correspondence should refer to parcel number
See reverse side for important information
Be sure this description covers your property This description is for property tax bill only and may not be a full legal description

ACRES 0 127

NEETU JAITLY
9436 W LOOMIS RD UNIT 5
FRANKLIN WI 53132-8294

EVAN'S POND CONDOMINIUM EXPANSION NO 3 NE 17 5 21

Property Address 9436 W LOOMIS RD UNIT 5

Parcel # 8010086000
Alt Parcel #

Assessed Value Land	Ass d Value Improvements	Total Assessed Value	Ave Assmt Ratio	Net Assessed Value Rate (Does NOT reflect credits)
51,900	192,5 0	244,400	0 9965	0 016227602

Est. Fair Mkt. Land	Esl Fair Mkt. Improvements	Total Est Fair Mkt	A Star in this box means Unpaid Prior Year Taxes	School taxes reduced by school levy tax credit
52,100	193,200	245,300		$ 386 77

Taxing Jurisdiction	2023 Est. State Aids Allocated Tax Dist.	2024 Est. State Aids Allocated Tax Dist.	2023 Net Tax	2024 Net Tax	% Tax Change
MILWAUKEE COUNTY	4,350,816	4,354,589	685 69	770 45	12 4%
CITY OF FRANKLIN	3,420,529	3,538,487	823 82	936 72	13 7%
FRANKLIN SCHOOL DIST	33,198,986	35,343,914	1,336 74	1,759 15	31 6%
MMSD			268 84	303 38	12 8%
MATC	4,518,534	4,549,722	175 15	196 34	12 1%
Total	45,488,865	47,786,712	3,290 24	3,966 04	20 5%
First Dollar Credit			71 44	79 25	10 9%
Lottery & Gaming Credit			265 93	255 16	-4 0
Net Property Tax			2,952 87	3,631 63	23 0

Make Check Payable to
CITY OF FRANKLIN
TREASURER
9229 W LOOMIS ROAD
FRANKLIN WI 53132-9728
414 425-4770

Full Payment Due On or Before January 31 2025
$3,791 23

Or pay the following installments to
1847 85 DUE BY 01/31/2025
971 69 DUE BY 03/31/2025
971 69 DUE BY 05/31/2025

Net Property Tax 3,631 63
2025 GARBAGE & RECYCLIN 159 60

FOR TREASURERS USE ONLY
PAYMENT
BALANCE
DATE

FOR INFORMATIONAL PURPOSES ONLY
Voter Approved Temporary Tax Increases

Taxing Jurisdiction	Total Additional Taxes	Total Additional Taxes Applied to Property	Year Increase Ends
FRANKLIN HOOL DI T	1 4	1 4	
FRANKLIN HOOL DI T	4	1 4	

TOTAL DUE FOR FULL PAYMENT
Pay By January 31 2025
▶ $ 3,791 23
Warning If not paid by due dates installment option is lost and total tax is delinquent subject to interest and if applicable penalty **Failure to pay on time See reverse**

PA-686/3 (R 8-15)

▼ PLEASE RETURN LOWER PORTION WITH REMITTANCE ▼

CITY OF FRANKLIN
TREASURER
9229 W LOOMIS ROAD
FRANKLIN WI 53132-9728

☐ Check For Billing Address Change

NEETU JAITLY
9436 W LOOMIS RD UNIT 5
FRANKLIN WI 53132-8294

REAL ESTATE PROPERTY TAX BILL FOR 2024

Bill # 360403
Parcel #. 8010086000
Alt. Parcel #

Total Due For Full Payment $3,791 23
Pay to Local Treasurer By Jan 31, 2025

OR PAY INSTALLMENTS OF

1ST INSTALLMENT
Pay to Local Treasurer
$1,847 85
BY January 31 2025

2ND INSTALLMENT
Pay to Local Treasurer
$971.69
BY March 31 2025

3RD INSTALLMENT
Pay to Local Treasurer
$971.69
BY May 31 2025

FOR TREASURERS USE ONLY
PAYMENT
BALANCE
DATE

Name		Neetu Jaitly			
Parcel ID		801-0086-000			
Assessed Value -	Original	$244 400			
Assessed Value -	Revised	$238,100			
Payments Due		-6,300			
Lottery Credit/First Dollar		0 00	0 00	0 00	
1/31		1,983 02	1,931 91	51 12	
3/31		991 51	965 95	25 56	
5/31		991 51	965 95	25 56	
		3,966 04	3,863 81	102 23	

	GL A/R Acct	2024 Rate	Original Amount	Adjusted Amount	Difference	State Report Difference
State Tax		0 0000000	0 00	0 00	0 00	0 00
Milwaukee County	01 0000 1415	3 1524053	770 45	750 59	19 86	18 10
Sales Tax Credit		0 0000000	0 00	0 00	0 00	
City of Franklin	01 0198 5543	3 8327391	936 72	912 58	24 14	21 99
MATC (VTAE)	01 0000 1412	0 8033489	196 34	191 28	5 06	4 61
1 Franklin Schools	01 0000 1411	8 7803398	2,145 92	2,090 60	55 32	50 40
State School Levy credit		-1 5825460	-386 77	-376 80	-9 97	
MMSD	01 0000 1413	1 2413147	303 38	295 56	7 82	7 13
		16 2276018	3,966 04	3,863 81	102 23	102 23

Milwaukee County is entitled to the Sales tax credit
The School levy credit is proportioned among all taxing districts
The State when calculating the amounts will calculate the TIF impact and include that with the City total

Franklin Schools	01 0000 1411	8 7803398
Oak Creek/Franklin Schools	01 0000 1418	7 1856896
Whitnall Schools	01 0000 1419	7 2005082
No Sewer		0 0000000

TOTAL

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE June 17, 2025
REPORTS & RECOMMENDATIONS	**A Resolution Approving a Partial Property Tax Rescission and Refund for Parcel #796-0059-000**	ITEM NUMBER G. 1. (e).

BACKGROUND

Per Wisconsin State Statutes, the removal of property taxes needs to be authorized by the Common Council. Statutes enumerate specific conditions under which a rescission/refund is appropriate and necessary. There is currently one property that was incorrectly assessed for the 2024 tax year. Due to a palpable error, the value has been reduced by $5,500.

ANALYSIS

Parcel: 796-0059-000
Owner: Richard Neudorff
Address: 11460 W. Swiss St.

Per the City's Assessor, the initial 2024 assessment was incorrect. The assessor corrected the water source from City water to a well.

FISCAL NOTE

The impact of the above rescission/refund is likely a bad debt expense for the City in the amount of $89.25. There is a formal process that allows the City to notify the Department of Revenue (DOR) of rescissions in October of each year, and, as long as the total of all rescissions, for the tax year, for the City of Franklin, meet the statutory dollar threshold, $250 or more per any single property, the chargeback will be authorized, and the other taxing entities will be responsible for their share. Staff will not need to submit any documentation to the Department of Revenue due to the refund amount being below the statutory dollar threshold.

RECOMMENDATION

Staff recommends that Council authorize this resolution to partially rescind and refund the above noted taxes as outlined. Due to the 2024 property taxes being unpaid, the $89.25 will be applied to the tax bill.

COUNCIL ACTION REQUESTED

Motion to approve Resolution No. 2025-_____, A Resolution Approving a Partial Property Tax Rescission and Refund for Parcel #796-0059-000; and direct staff to directly refund the original property owner.

Finance Dept - DB

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO 2025-_____

RESOLUTION APPROVING A PARTIAL PROPERTY TAX RESCISSION AND REFUND FOR PARCEL #796-0059-000

WHEREAS, the following property taxes were assessed improperly, per Wisconsin State Statutes 74 33 (1) (a), which states that a clerical error has been made in the description of the property, and a partial rescission and refund of the tax due is appropriate:

Richard Neudorff
11460 W Swiss St
Franklin, WI 53132
(Parcel #796-0059-000) $89 25

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, that the proper City Officials are hereby authorized and directed to rescind and refund to the outstanding property bill in the sum of $89 25, and

BE IT FURTHER RESOLVED, that the proper City shall have a bad debt expense in the amount of $89 25, pursuant to Wisconsin State Statutes 74 41, which has a $250 statutory threshold

Funds for this purpose are appropriated from the following Account Numbers

01-0000-1415	*Milwaukee County*	*$0 00*
01-0198-5543	*City of Franklin*	*$89 25*
01-0000-1412	*MATC*	*$0 00*
01-0000-1411	*Franklin School District*	*$0 00*
01-0000-1413	*MMSD*	*$0 00*

Resolution introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025

Passed at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025

APPROVED

_____
John R Nelson, Mayor

ATTEST

_____
Shirley J Roberts, City Clerk

AYES____NOES____ABSENT____

NEUDORFF, RICHARD T

STATE OF WISCONSIN
REAL ESTATE PROPERTY TAX BILL FOR 2024

CITY OF FRANKLIN
MILWAUKEE COUNTY

BILL NUMBER. 359679

IMPORTANT Correspondence should refer to parcel number
See reverse side for important information
Be sure this description covers your property This description is for property tax bill only and may not be a full legal description

ACRES 0 083

RICHARD T NEUDORFF
2654 MAIN ST BOX 292
EAST TROY WI 53120

VILLAGE OF ST MARTIN SW HALF OF LOT 13 BLK 8 & SELY HALF

Property Address 11460 W SWISS ST

Parcel # 7960059000
Alt Parcel #

Assessed Value Land	Ass d Value Improvements	Total Assessed Value	Ave Assmt. Ratio	Net Assessed Value Rate (Does NOT reflect credits)
36,200		36,200	0 9965	0 016227602

Est. Fair Mkt Land	Est. Fair Mkt. Improvements	Total Est Fair Mkt	A Star in this box means Unpaid Prior Year Taxes	School taxes reduced by school levy tax credit
36,300		36,300		$57 29

Taxing Jurisdiction	2023 Est State Aids Allocated Tax Dist	2024 Est. State Aids Allocated Tax Dist	2023 Net Tax	2024 Net Tax	% Tax Change
MILWAUKEE COUNTY	4,350,816	4,354,589	45 85	114 12	
CITY OF FRANKLIN	3,420,529	3,538,487	55 08	138 75	
FRANKLIN SCHOOL DIST	33,198,986	35,343,914	89 38	260 56	
MMSD			17 98	44 94	
MATC	4,518,534	4,549,722	11 71	29 08	
Total	45,488,865	47, 86,712	220 00	587 45	
	First Dollar Credit				
	Lottery & Gaming Credit				
	Net Property Tax		220 00	587 45	

Make Check Payable to
CITY OF FRANKLIN
TREASURER
9229 W LOOMIS ROAD
FRANKLIN WI 53132-9728
414-425-4770

Full Payment Due On or Before January 31, 2025
$587 45

Or pay the following installments to
293 3 DUE BY 01/31/2025
146 86 DUE BY 03/3./2025
146 86 DUE BY 05/31/2025

Net Property Tax 587 45

FOR TREASURERS USE ONLY
PAYMENT
BALANCE
DATE

FOR INFORMATIONAL PURPOSES ONLY
Voter Approved Temporary Tax Increases

Taxing Jurisdiction	Total Additional Taxes	Total Additional Taxes Applied to Property	Year Increase Ends
FRANKLIN HOOL DI T	1 4	1	
FRANKLIN HOOL DI T	49	4 14	

TOTAL DUE FOR FULL PAYMENT
Pay By January 31 2025
▶ $ 587 45
Warning If not paid by due dates installment option is lost and total tax is delinquent subject to interest and if applicable, penalty **Faliure to pay on time See reverse**

PA-686/3 (R 8-15)

▼ **PLEASE RETURN LOWER PORTION WITH REMITTANCE** ▼

CITY OF FRANKLIN
TREASURER
9229 W LOOMIS ROAD
FRANKLIN WI 53132-9728

☐ Check For Billing Address Change

RICHARD T NEUDORFF
2654 MAIN ST BOX 292
EAST TROY WI 53120

REAL ESTATE PROPERTY TAX BILL FOR 2024

Bill # 359679
Parcel # 7960059000
Alt Parcel #

Total Due For Full Payment $587 45
Pay to Local Treasurer By Jan 31 2025

OR PAY INSTALLMENTS OF

1ST INSTALLMENT
Pay to Local Treasurer
$293 73
BY January 31 2025

2ND INSTALLMENT
Pay to Local Treasurer
$146 86
BY March 31 2025

3RD INSTALLMENT
Pay to Local Treasurer
$146 86
BY May 31 2025

FOR TREASURERS USE ONLY
PAYMENT
BALANCE
DATE

Name		Richard T Neudorff			
Parcel ID		796-0059-000			
Assessed Value -	Original	$36,200			
Assessed Value -	Revised	$30,700			
Payments Due		-5,500			
Lottery Credit/First Dollar		0 00	0 00	0 00	
1/31		293 73	249 10	44 63	
3/31		146 86	124 55	22 31	
5/31		146 86	124 55	22 31	
		587 45	498 20	89 25	

	GL A/R Acct	2024 Rate	Original Amount	Adjusted Amount	Difference	State Report Difference
State Tax		0 0000000	0 00	0 00	0 00	0 00
Milwaukee County	01 0000 1415	3 1524053	114 12	96 78	17 34	15 80
Sales Tax Credit		0 0000000	0 00	0 00	0 00	
City of Franklin	01 0198 5543	3 8327391	138 75	117 67	21 08	19 20
MATC (VTAE)	01 0000 1412	0 8033489	29 08	24 66	4 42	4 03
1 Franklin Schools	01 0000 1411	8 7803398	317 85	269 56	48 29	44 00
State School Levy credit		-1 5825460	-57 29	-48 58	-8 71	
MMSD	01 0000 1413	1 2413147	44 94	38 11	6 83	6 22
		16 2276018	587 45	498 20	89 25	89 25

Milwaukee County is entitled to the Sales tax credit
The School levy credit is proportioned among all taxing districts
The State when calculating the amounts will calculate the TIF impact and include that with the City total

Franklin Schools	01 0000 1411	8 7803398
Oak Creek/Franklin Schools	01 0000 1418	7 1856896
Whitnall Schools	01 0000 1419	7 2005082
No Sewer		0 0000000

TOTAL

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE June 17, 2025
REPORTS & RECOMMENDATIONS	A Resolution Approving a Partial Property Tax Rescission and Refund for Parcel #796-0074-000	ITEM NUMBER G. 1. (f).

BACKGROUND

Per Wisconsin State Statutes, the removal of property taxes needs to be authorized by the Common Council. Statutes enumerate specific conditions under which a rescission/refund is appropriate and necessary. There is currently one property that was incorrectly assessed for the 2024 tax year. Due to a palpable error, the value has been reduced by $10,900.

ANALYSIS

Parcel: 796-0074-000
Owner: Richard Neudorff
Address: 11460 W. Swiss St. Unit Rear

Per the City's Assessor, the initial 2024 assessment was incorrect. The assessor corrected the water source from City water to a well and corrected the land size.

FISCAL NOTE

The impact of the above rescission/refund is likely a bad debt expense for the City in the amount of $176.89. There is a formal process that allows the City to notify the Department of Revenue (DOR) of rescissions in October of each year, and, as long as the total of all rescissions, for the tax year, for the City of Franklin, meet the statutory dollar threshold, $250 or more per any single property, the chargeback will be authorized, and the other taxing entities will be responsible for their share. Staff will not need to submit any documentation to the Department of Revenue due to the refund amount being below the statutory dollar threshold.

RECOMMENDATION

Staff recommends that Council authorize this resolution to partially rescind and refund the above noted taxes as outlined. Due to the 2024 property taxes being unpaid, the $176.89 will be applied to the tax bill.

COUNCIL ACTION REQUESTED

Motion to approve Resolution No. 2025-_____, A Resolution Approving a Partial Property Tax Rescission and Refund for Parcel #796-0074-000; and direct staff to directly refund the original property owner.

Finance Dept - DB

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO 2025-_____

RESOLUTION APPROVING A PARTIAL PROPERTY TAX RESCISSION AND REFUND FOR PARCEL #796-0074-000

WHEREAS, the following property taxes were assessed improperly, per Wisconsin State Statutes 74 33 (1) (a), which states that a clerical error has been made in the description of the property, and a partial rescission and refund of the tax due is appropriate

Richard Neudorff
11460 W Swiss St Unit Rear
Franklin, WI 53132
(Parcel #796-0074-000) $176 89

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, that the proper City Officials are hereby authorized and directed to rescind and refund to the outstanding property bill in the sum of $176 89, and

BE IT FURTHER RESOLVED, that the proper City shall have a bad debt expense in the amount of $176 89, pursuant to Wisconsin State Statutes 74 41, which has a $250 statutory threshold

Funds for this purpose are appropriated from the following Account Numbers

01-0000-1415	*Milwaukee County*	*$0 00*
01-0198-5543	*City of Franklin*	*$176 89*
01-0000-1412	*MATC*	*$0 00*
01-0000-1411	*Franklin School District*	*$0 00*
01-0000-1413	*MMSD*	*$0 00*

Resolution introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025

Passed at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025

APPROVED

_____
John R Nelson, Mayor

ATTEST

_____
Shirley J Roberts, City Clerk

AYES____NOES____ABSENT____

NEUDORFF, RICHARD T

STATE OF WISCONSIN

REAL ESTATE PROPERTY TAX BILL FOR 2024

CITY OF FRANKLIN
MILWAUKEE COUNTY

BILL NUMBER. 359687

IMPORTANT Correspondence should refer to parcel number
See reverse side for important information
Be sure this description covers your property This description is for property tax bill only and may not be a full legal description

ACRES 0 248

RICHARD T NEUDORFF
2654 MAIN ST BOX 292
EAST TROY WI 53120

ILLAGE OF ST MARTIN SW HALF OF LOT 26 BLK 8 & NWLY HALF

Property Address 11460 W SWISS ST UNIT REAR

Parcel # 7960074000
Alt Parcel #

Assessed Value Land	Ass d Value Improvements	Total Assessed Value	Ave Assmt Ratio	Net Assessed Value Rate (Does NOT reflect credits)
23,200		23,200	0 9965	0 016227602

Est. Fair Mkt Land	Est Fair Mkt. Improvements	Total Est. Fair Mkt.	A Star in this box means Unpaid Prior Year Taxes	School taxes reduced by school levy tax credit
23,300		23,300		$36 72

Taxing Jurisdiction	2023 Est. State Aids Allocated Tax Dist	2024 Est State Aids Allocated Tax Dist.	2023 Net Tax	2024 Net Tax	% Tax Change
MILWAUKEE COUNTY	4,350,816	4,354,589	11 80	73 14	
CITY OF FRANKLIN	3,420,529	3,538,487	14 18	88 92	
FRANKLIN SCHOOL DIST	33,198,986	35,343,914	23 00	166 98	
MMSD			4 63	28 80	
MATC	4,518,534	4,549,722	3 01	18 64	
Total	45,488,865	47,786,712	56 62	376 48	
First Dollar Credit					
Lottery & Gaming Credit					
Net Property Tax			56 62	376 48	

Make Check Payable to
CITY OF FRANKLIN
TREASURER
9229 W LOOMIS ROAD
FRANKLIN WI 53132-9728
414-425-4770

Full Payment Due On or Before January 31 2025
$376 48

Or pay the following installments to
188 24 DUE BY 01/31/2025
94 12 DUE BY 03/31/2025
94 12 DUE BY 05/31/2025

Net Property Tax 376 48

FOR TREASURERS USE ONLY
PAYMENT
BALANCE
DATE

FOR INFORMATIONAL PURPOSES ONLY
Voter Approved Temporary Tax Increases

Taxing Jurisdiction	Total Additional Taxes	Total Additional Taxes Applied to Property	Year Increase Ends
FRANKLIN HOLIDAY	4	1 1	- -
FRANKLIN HOOL DI T	4-		-

TOTAL DUE FOR FULL PAYMENT
Pay By January 31 2025
▶ $ 376.48
Warning If not paid by due dates installment option is lost and total tax is delinquent subject to interest and if applicable penalty Failure to pay on time See reverse

PA-686/3 (R 8-15)

▼ PLEASE RETURN LOWER PORTION WITH REMITTANCE ▼

CITY OF FRANKLIN
TREASURER
9229 W LOOMIS ROAD
FRANKLIN WI 53132-9728

Check For Billing Address Change

RICHARD T NEUDORFF
2654 MAIN ST BOX 292
EAST TROY WI 53120

REAL ESTATE PROPERTY TAX BILL FOR 2024

Bill #. 359687
Parcel # 7960074000
Alt. Parcel #

Total Due For Full Payment $376.48
Pay to Local Treasurer By Jan 31 2025

OR PAY INSTALLMENTS OF

1ST INSTALLMENT
Pay to Local Treasurer
$188.24
BY January 31 2025

2ND INSTALLMENT
Pay to Local Treasurer
$94.12
BY March 31 2025

3RD INSTALLMENT
Pay to Local Treasurer
$94.12
BY May 31 2025

FOR TREASURERS USE ONLY
PAYMENT
BALANCE
DATE

Name		Richard T Neudorff			
Parcel ID		796-0074-000			
Assessed Value -	Original	$23,200			
Assessed Value -	Revised	$12,300			
Payments Due		-10,900			
Lottery Credit/First Dollar		0 00	0 00	0 00	
1/31		188 24	99 80	88 45	
3/31		94 12	49 90	44 22	
5/31		94 12	49 90	44 22	
		376 48	199 59	176 89	

		GL A/R Acct	2024 Rate	Original Amount	Adjusted Amount	Difference	State Report Difference
	State Tax		0 0000000	0 00	0 00	0 00	0 00
	Milwaukee County	01 0000 1415	3 1524053	73 14	38 77	34 37	31 32
	Sales Tax Credit		0 0000000	0 00	0 00	0 00	
	City of Franklin	01 0198 5543	3 8327391	88 92	47 14	41 78	38 06
	MATC (VTAE)	01 0000 1412	0 8033489	18 64	9 88	8 76	7 98
1	Franklin Schools	01 0000 1411	8 7803398	203 70	108 00	95 70	87 20
	State School Levy credit		-1 5825460	-36 72	-19 47	-17 25	
	MMSD	01 0000 1413	1 2413147	28 80	15 27	13 53	12 33
			16 2276018	376 48	199 59	176 89	176 89

Milwaukee County is entitled to the Sales tax credit
The School levy credit is proportioned among all taxing districts
The State when calculating the amounts will calculate the TIF impact and include that with the City total

Franklin Schools	01 0000 1411	8 7803398
Oak Creek/Franklin Schools	01 0000 1418	7 1856896
Whitnall Schools	01 0000 1419	7 2005082
No Sewer		0 0000000

TOTAL

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE June 17, 2025
REPORTS & RECOMMENDATIONS	**A Resolution Approving a Partial Property Tax Rescission and Refund for Parcel #796-0075-000**	ITEM NUMBER G. 1. (g).

BACKGROUND

Per Wisconsin State Statutes, the removal of property taxes needs to be authorized by the Common Council. Statutes enumerate specific conditions under which a rescission/refund is appropriate and necessary. There is currently one property that was incorrectly assessed for the 2024 tax year. Due to a palpable error, the value has been reduced by $21,400.

ANALYSIS

Parcel: 796-0075-000
Owner: Richard Neudorff
Address: 11460 W. Swiss St. Unit Rear

Per the City's Assessor, the initial 2024 assessment was incorrect. The assessor corrected the water source from City water to a well and corrected the land size.

FISCAL NOTE

The impact of the above rescission/refund is likely a bad debt expense for the City in the amount of $74.73. There is a formal process that allows the City to notify the Department of Revenue (DOR) of rescissions in October of each year, and, as long as the total of all rescissions, for the tax year, for the City of Franklin, meet the statutory dollar threshold, $250 or more per any single property, the chargeback will be authorized, and the other taxing entities will be responsible for their share. Staff will complete the statutory submittal and make the request to be reimbursed by the other taxing entities for their prorated shares totaling approximately $272.55.

RECOMMENDATION

Staff recommends that Council authorize this resolution to partially rescind and refund the above noted taxes as outlined. Due to the 2024 property taxes being unpaid, the $347.28 will be applied to the tax bill.

COUNCIL ACTION REQUESTED

Motion to approve Resolution No. 2025-_____, A Resolution Approving a Partial Property Tax Rescission and Refund for Parcel #796-0075-000; and direct staff to directly refund the original property owner.

Finance Dept - DB

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2025-_____

RESOLUTION APPROVING A PARTIAL PROPERTY TAX RESCISSION AND REFUND FOR PARCEL #796-0075-000

WHEREAS, the following property taxes were assessed improperly, per Wisconsin State Statutes 74.33 (1) (a), which states that a clerical error has been made in the description of the property, and a partial rescission and refund of the tax due is appropriate:

Richard Neudorff
11460 W. Swiss St. Unit Rear
Franklin, WI 53132
(Parcel #796-0075-000) $347.28

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, that the proper City Officials are hereby authorized and directed to rescind and refund to the outstanding property bill in the sum of $347.28; and

BE IT FURTHER RESOLVED, that the proper City Officials authorized and directed to seek compensation from the other taxing authorities, if applicable, per Wisconsin State Statutes 74.41.

Funds for this purpose are appropriated from the following Account Numbers:

01-0000-1415	*Milwaukee County*	*$61.47*
01-0198-5543	*City of Franklin*	*$74.73*
01-0000-1412	*MATC*	*$15.67*
01-0000-1411	*Franklin School District*	*$171.20*
01-0000-1413	*MMSD*	*$24.21*

Resolution introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025.

Passed at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025.

APPROVED:

_____
John R. Nelson, Mayor

ATTEST:

_____
Shirley J. Roberts, City Clerk

AYES____NOES____ABSENT____

NEUDORFF, RICHARD T

STATE OF WISCONSIN

REAL ESTATE PROPERTY TAX BILL FOR 2024

CITY OF FRANKLIN
MILWAUKEE COUNTY

BILL NUMBER. 359688

IMPORTANT Correspondence should refer to parcel number
See reverse side for important information
Be sure this description covers your property This description is for property tax bill only and may not be a full legal description

ACRES 0 496

RICHARD T NEUDORFF
2654 MAIN ST BOX 292
EAST TROY WI 53120

VILLAGE OF ST MARTIN LOT 27 BLK 8 & NWLY HALF OF VAC

Property Address 11460 W SWISS ST UNIT REAR

Parcel # 7960075000
Alt Parcel #

Assessed Value Land	Ass d Value Improvements	Total Assessed Value	Ave Assmt Ratio	Net Assessed Value Rate (Does NOT reflect credits)
46,400		46,400	0 9965	0 016227602

Est. Fair Mkt Land	Est. Fair Mkt. Improvements	Total Est. Fair Mkt.	A Star in this box means Unpaid Prior Year Taxes	School taxes reduced by school levy tax credit
46,600		46,600		$73 43

Taxing Jurisdiction	2023 Est State Aids Allocated Tax Dist.	2024 Est. State Aids Allocated Tax Dist.	2023 Net Tax	2024 Net Tax	% Tax Change
MILWAUKEE COUNTY	4,350,816	4,354,589	13 15	146 27	
CITY OF FRANKLIN	3,420,529	3,538,487	15 80	177 84	
FRANKLIN SCHOOL DIST	33,198,986	35,343,914	25 63	333 98	
MMSD			5 15	57 60	
MATC	4,518,534	4,549,722	3 36	37 28	
Total	45,488,865	47,786,712	63 09	752 97	
First Dollar Credit					
Lottery & Gaming Credit					
Net Property Tax			63 09	752 97	

Make Check Payable to
CITY OF FRANKLIN
TREASURER
9229 W LOOMIS ROAD
FRANKLIN WI 53132-9728
414-425-4770

Full Payment Due On or Before January 31, 2025
$752 97

Or pay the following installments to
376 49 DUE BY 01/31/2025
188 24 DUE BY 03/31/2025
188 24 DUE BY 05/31/2025

Net Property Tax 752 97

FOR TREASURERS USE ONLY
PAYMENT
BALANCE
DATE

FOR INFORMATIONAL PURPOSES ONLY
Voter Approved Temporary Tax Increases

Taxing Jurisdiction	Total Additional Taxes	Total Additional Taxes Applied to Property	Year Increase Ends
FRANKLIN HOOL DI T	4	- 6	- 25
FR NKLI N HOOL DI T		1 4	

TOTAL DUE FOR FULL PAYMENT
Pay By January 31 2025
▶ $ 752 97
Warning If not paid by due dates installment option is lost and total tax is delinquent subject to interest and if applicable penalty **Failure to pay on time See reverse**

PA-686/3 (R 8-15)

▼ PLEASE RETURN LOWER PORTION WITH REMITTANCE ▼

CITY OF FRANKLIN
TREASURER
9229 W LOOMIS ROAD
FRANKLIN WI 53132-9728

☐ Check For Billing Address Change

RICHARD T NEUDORFF
2654 MAIN ST BOX 292
EAST TROY WI 53120

REAL ESTATE PROPERTY TAX BILL FOR 2024

Bill # 359688
Parcel # 7960075000
Alt. Parcel #

Total Due For Full Payment $752 97
Pay to Local Treasurer By Jan 31, 2025

OR PAY INSTALLMENTS OF

1ST INSTALLMENT
Pay to Local Treasurer
$376.49
BY January 31 2025

2ND INSTALLMENT
Pay to Local Treasurer
$188.24
BY March 31 2025

3RD INSTALLMENT
Pay to Local Treasure
$188.24
BY May 31 2025

FOR TREASURERS USE ONLY
PAYMENT
BALANCE
DATE

Name		Richard T Neudorff			
Parcel ID		796-0075-000			
Assessed Value -	Original	$46,400			
Assessed Value -	Revised	$25,000			
Payments Due		-21,400			
Lottery Credit/First Dollar		0 00	0 00	0 00	
1/31		376 49	202 85	173 64	
3/31		188 24	101 42	86 82	
5/31		188 24	101 42	86 82	
		752 97	405 69	347 28	

	GL A/R Acct	2024 Rate	Original Amount	Adjusted Amount	Difference	State Report Difference
State Tax		0 0000000	0 00	0 00	0 00	0 00
Milwaukee County	01 0000 1415	3 1524053	146 27	78 81	67 46	61 47
Sales Tax Credit		0 0000000	0 00	0 00	0 00	
City of Franklin	01 0198 5543	3 8327391	177 84	95 82	82 02	74 73
MATC (VTAE)	01 0000 1412	0 8033489	37 28	20 08	17 20	15 67
1 Franklin Schools	01 0000 1411	8 7803398	407 41	219 51	187 90	171 20
State School Levy credit		-1 5825460	-73 43	-39 56	-33 87	
MMSD	01 0000 1413	1 2413147	57 60	31 03	26 57	24 21
		16 2276018	752 97	405 69	347 28	347 28

Milwaukee County is entitled to the Sales tax credit
The School levy credit is proportioned among all taxing districts
The State when calculating the amounts will calculate the TIF impact and include that with the City total

Franklin Schools	01 0000 1411	8 7803398
Oak Creek/Franklin Schools	01 0000 1418	7 1856896
Whitnall Schools	01 0000 1419	7 2005082
No Sewer		0 0000000

TOTAL

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE June 17, 2025
REPORTS & RECOMMENDATIONS	**A Resolution Approving a Partial Property Tax Rescission and Refund for TKN 807-0106-000**	ITEM NUMBER G. 1. (h).

BACKGROUND

Per Wisconsin State Statutes, the removal of property taxes needs to be authorized by the Common Council. Statutes enumerate specific conditions under which a rescission/refund is appropriate and necessary. There is currently one property that was incorrectly assessed for the 2024 tax year. Due to a palpable error, the value has been reduced by $158,900.

ANALYSIS

Parcel: 807-0106-000
Owner: Crooked Creek HOA
Address: S. 43rd Street

Per the City's Assessor, the initial 2024 assessment was incorrect. The current out lot was valued incorrectly.

FISCAL NOTE

The impact of the above rescission/refund is likely a bad debt expense for the City in the amount of $554.90. There is a formal process that allows the City to notify the Department of Revenue (DOR) of rescissions in October of each year, and, as long as the total of all rescissions, for the tax year, for the City of Franklin, meet the statutory dollar threshold, $250 or more per any single property, the chargeback will be authorized, and the other taxing entities will be responsible for their share. Staff will complete the statutory submittal and make the request to be reimbursed by the other taxing entities for their prorated shares totaling approximately $2,023.65.

RECOMMENDATION

Staff recommends that Council authorize this resolution to partially rescind and refund the above noted taxes as outlined. Due to the 2024 property tax bill being paid in full, the $2,578.55 will be refunded back to the property owner.

COUNCIL ACTION REQUESTED

Motion to approve Resolution No. 2025-_____, A Resolution Approving a Partial Property Tax Rescission and Refund for TKN 807-0106-000; and direct staff to directly refund the original property owner.

Finance Dept - DB

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2025-_____

RESOLUTION APPROVING A PARTIAL PROPERTY TAX RESCISSION AND REFUND FOR TKN 807-0106-000

WHEREAS, the following property taxes were assessed improperly, per Wisconsin State Statutes 74.33 (1) (a), which states that a clerical error has been made in the description of the property, and a partial rescission and refund of the tax due is appropriate:

Michael Babler
S 43rd Street
Franklin, WI 53132
(Parcel #807-0106-000) $2,578.55

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, that the proper City Officials are hereby authorized and directed to rescind and refund to the property owner in the sum of $2,578.55; and

BE IT FURTHER RESOLVED, that the proper City Officials authorized and directed to seek compensation from the other taxing authorities, if applicable, per Wisconsin State Statutes 74.41.

Funds for this purpose are appropriated from the following Account Numbers:

01-0000-1415	*Milwaukee County*	*$456.41*
01-0198-5543	*City of Franklin*	*$554.90*
01-0000-1412	*MATC*	*$116.31*
01-0000-1411	*Franklin School District*	*$1,271.22*
01-0000-1413	*MMSD*	*$179.71*

Resolution introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025.

Passed at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025.

APPROVED:

_____
John R. Nelson, Mayor

ATTEST:

_____
Shirley J. Roberts, City Clerk

AYES____NOES____ABSENT____

CROOKED CREEK HOA

STATE OF WISCONSIN

REAL ESTATE PROPERTY TAX BILL FOR 2024

CITY OF FRANKLIN
MILWAUKEE COUNTY

BILL NUMBER: 361791

IMPORTANT Correspondence should refer to parcel number
See reverse side for important information
Be sure this description covers your property This description is for property tax bill only and may not be a full legal description

ACRES 1 738

CROOKED CREEK HOA
PO BOX 321252
FRANKLIN WI 53132

CROOKED CREEK OUTLOT 5

Property Address S 43RD ST

Parcel # 8070106000
Alt Parcel #

Assessed Value Land	Ass d Value Improvements	Total Assessed Value	Ave Assmt Ratio	Net Assessed Value Rate (Does NOT reflect credits)
160,500		1o0,500	0 9965	0 016227602

Est. Fair Mkt Land	Est Fair Mkt. Improvements	Total Est. Fair Mkt	A Star In this box means Unpaid Prior Year Taxes	School taxes reduced by school levy tax credit
161,100		161,100		$ 254 00

Taxing Jurisdiction	2023 Est State Aids Allocated Tax Dist	2024 Est State Aids Allocated Tax Dist	2023 Net Tax	2024 Net Tax	% Tax Change
MILWAUKEE COUNTY	4,350,816	4,354,589		505 96	100 0%
CITY OF FRANKLIN	3,420,529	3,538,487		615 15	100 0%
FRANKLIN SCHOOL DIST	33,198,986	35,343,914		1,155 24	100 0%
MMSD				199 23	100 0
MATC	4,518,534	4,549,722		128 94	100 0
Total	45,488,865	47,786,712		2,604 52	100 0%
First Dollar Credit					
Lottery & Gaming Credit					
Net Property Tax				2,604 52	100 0%

Make Check Payable to
CITY OF FRANKLIN
TREASURER
9229 W LOOMIS ROAD
FRANKLIN WI 53132 9728
414-425-4770

Full Payment Due On or Before January 31 2025
$2,604 52

Or pay the following installments to
1302 26 DUE BY 01/31/2025
651 13 DUE BY 03/31/2025
651 13 DUE BY 05/31/2025

Net Property Tax 2,604 52

FOR TREASURERS USE ONLY
PAYMENT
BALANCE
DATE

FOR INFORMATIONAL PURPOSES ONLY
Voter Approved Temporary Tax Increases

Taxing Jurisdiction	Total Additional Taxes	Total Additional Taxes Applied to Property	Year Increase Ends
FRANKLIN HOOL DIST	4	4	-
FRANKLIN SCHOOL DIST	4		

TOTAL DUE FOR FULL PAYMENT
Pay By January 31 2025
▶ $ 2,604 52

Warning If not paid by due dates installment option is lost and total tax is delinquent subject to interest and if applicable penalty **Failure to pay on time See reverse**

PA-686/3 (R 8-15)

▼ **PLEASE RETURN LOWER PORTION WITH REMITTANCE** ▼

CITY OF FRANKLIN
TREASURER
9229 W LOOMIS ROAD
FRANKLIN WI 53132-9728

REAL ESTATE PROPERTY TAX BILL FOR 2024

Bill # 361791
Parcel # 8070106000
Alt Parcel #

Total Due For Full Payment $2,604.52
Pay to Local Treasurer By Jan 31 2025

OR PAY INSTALLMENTS OF

1ST INSTALLMENT
Pay to Local Treasurer
$1,302 26
BY January 31 2025

2ND INSTALLMENT
Pay to Local Treasurer
$651.13
BY March 31 2025

3RD INSTALLMENT
Pay to Local Treasurer
$651.13
BY May 31 2025

☐ Check For Billing Address Change

CROOKED CREEK HOA
PO BOX 321252
FRANKLIN WI 53132

FOR TREASURERS USE ONLY
PAYMENT
BALANCE
DATE

Name		Crooked Creek HOA			
Parcel ID		807-0106-000			
Assessed Value -	Original	$160,500			
Assessed Value -	Revised	$1,600			
Payments Due		-158,900			
Lottery Credit/First Dollar		0 00	0 00	0 00	
1/31		1,302 26	12 99	1,289 28	
3/31		651 13	6 49	644 64	
5/31		651 13	6 49	644 64	
		2,604 52	25 97	2,578 55	

	GL A/R Acct	2024 Rate	Original Amount	Adjusted Amount	Difference	State Report Difference
State Tax		0 0000000	0 00	0 00	0 00	0 00
Milwaukee County	01 0000 1415	3 1524053	505 96	5 04	500 92	456 41
Sales Tax Credit		0 0000000	0 00	0 00	0 00	
City of Franklin	01 0198 5543	3 8327391	615 15	6 13	609 02	554 90
MATC (VTAE)	01 0000 1412	0 8033489	128 94	1 29	127 65	116 31
1 Franklin Schools	01 0000 1411	8 7803398	1,409 24	14 05	1,395 19	1,271 22
State School Levy credit		-1 5825460	-254 00	-2 53	-251 47	
MMSD	01 0000 1413	1 2413147	199 23	1 99	197 24	179 71
		16 2276018	2,604 52	25 97	2,578 55	2,578 55

Milwaukee County is entitled to the Sales tax credit
The School levy credit is proportioned among all taxing districts
The State when calculating the amounts will calculate the TIF impact and include that with the City total

Franklin Schools	01 0000 1411	8 7803398
Oak Creek/Franklin Schools	01 0000 1418	7 1856896
Whitnall Schools	01 0000 1419	7 2005082
No Sewer		0 0000000

TOTAL

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE June 17, 2025
REPORTS AND RECOMMENDATIONS	An Ordinance to Repeal Chapter 167 Sex Offenders and Recreate Chapter 167 Entitled Sex Offender Residency Restrictions and Child Safety Zones, of the Municipal Code of Franklin, Wisconsin	ITEM NUMBER G. 2.

Changes in the law applicable to municipalities adopting and enforcing sex offender residency restrictions ordinances have occurred over the years upon litigation challenges resulting in court decisions and also by amendment to the Wisconsin Statutes. Based upon same, recommendation is to amend the Municipal Code to amend current provisions to be more in line with prevailing law. The main changes recommended are to lessen the distance requirement from a sex offender residence to the specified facility substantially used by children, to remove the original domicile restriction, to add provisions to create an appeal board to review decisions made upon the application of the ordinance, and to add provisions with regard exempting a person under supervised release or a person providing housing to that person from enforcement, pursuant to the Wisconsin Statutes.

Annexed hereto are a copy of the current Chapter 167 of the Municipal Code and a draft ordinance to repeal and recreate same. Also annexed hereto are the court cases as cited in §167-1B. of the draft ordinance, the sex offender recidivism studies cited in §§167-1C. and D. of the draft ordinance, and a map of the current residency restriction of 2,000 feet, and maps depicting residency restriction areas of 1,000, 750 and 500 feet, with the recommendation that the current distance be amended to no more than 1,000 feet.

The draft ordinance has a red bracket at the beginning of and at the end of the end of each provision recommended to be deleted from the draft which are for an original domicile restriction. The draft ordinance also has red bracketed blank spaces for the sex offender residence distance requirements which are to be entered therein.

COUNCIL ACTION REQUESTED

A motion to adopt An Ordinance to Repeal Chapter 167 Sex Offenders and Recreate Chapter 167 Entitled Sex Offender Residency Restrictions and Child Safety Zones, of the Municipal Code of Franklin, Wisconsin.

Legal Services Dept.: jw

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

draft 6/10/25

ORDINANCE NO. 25-____

AN ORDINANCE TO REPEAL CHAPTER 167 SEX OFFENDERS AND RECREATE CHAPTER 167 ENTITLED SEX OFFENDER RESIDENCY RESTRICTIONS AND CHILD SAFETY ZONES, OF THE MUNICIPAL CODE OF FRANKLIN, WISCONSIN

WHEREAS, the Common Council passed and adopted Ordinance No. 2007-1905 on January 9, 2007, amending prior Ordinances No. 2006-1895 and No. 2006-1901, to create Chapter 167 Sex Offenders, which was amended by Ordinance No. 2013-2116 on October 1, 2013, to add regulations for holiday events and public gatherings; and

WHEREAS, subsequent to the adoption of the aforesaid Ordinances, there have been Wisconsin legislative statutory changes to Chapter 980 of the Wisconsin Statutes providing for the civil commitment of sexually violent persons, including the provisions at Wis. Stat. § 980.135 prohibiting the enforcement of a municipal ordinance which restricts housing with regard to an individual under supervised release, the individual is residing where ordered to reside and is in compliance with all court orders, and there have been court opinions and decisions case law varying in part conclusions with regard to municipal sex offender residency restrictions ordinances than those in existence at the time of the adoption of the aforesaid Ordinances; and

WHEREAS, there have been studies conducted and reported with regard to the subject matter subsequent to the adoption of the aforesaid Ordinances; and

WHEREAS, the Common Council having determined upon the review of the aforesaid Ordinances with regard to the foregoing laws, and following review of the aforesaid studies, that changes to the sex offender residency restrictions, and to continue and maintain sex offender residency restrictions for the City, is reasonable and necessary to protect the health, safety and welfare of the residents and the Community.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: Chapter 167 of the Municipal Code of the City of Franklin, Wisconsin, is hereby repealed and recreated to read as follows:

SEX OFFENDER RESIDENCY RESTRICTIONS AND CHILD SAFETY ZONES

§167-1 Findings and Intent:

A. Whereas, the Common Council has the power, pursuant to Wis. Stat. § 62.11(5), to enact legislation promoting the health, safety, and welfare of the public.

B. Whereas, the Common Council has reviewed the holdings and findings of the following court cases: *McKune v Lile*, 122 S. Ct. 2017 (2002); *Smith v Doe*, 123 S. Ct. 1140 (2003); *Doe v Miller*, 405 F.3d 700 (8th Cir. 2005); *Vill of Menomonee Falls v. Ferguson*, 334 Wis. 2d 131 (Wis. Ct. App. 2011); *City of S. Milwaukee v Kester*, 347 Wis. 2d 334 (Wis. Ct. App. 2013); *Hoffman v. Vill. of Pleasant Prairie*, 249 F. Supp. 3d 951 (E.D. Wis. 2017); *Evenstad v. City of West St. Paul*, 306 F. Supp. 3d 1086 (D. Minn. 2018); *Werner v. City of Green Bay*, 743 Fed. Appx. 10 (7th Cir. 2018); *Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018); *Koch v. Village of Hartland*, 43 F.4th 747 (7th Cir. 2022) (overruled *Vasquez v Foxx)*; *Schroeder v. City of Muskego,* 20-CV-1066 Decision and Order (E.D. Wis. 2022); and *Nelson v. Town of Paris*, 78 F.4th 389 (7th Cir. 2023).

C. Whereas, based upon a 2003 study by the United States Department of Justice, Bureau of Justice Statistics, titled *Recidivism of Sex Offenders Released from Prison in 1994*, sex offenders released from prison were four times more likely to be rearrested for a sex crime as compared to non-sex offenders released from prison. Of those individuals included in the study, forty percent (40%) of new sex crimes committed by those sex offenders released from prison had occurred within the first twelve (12) months of release. Further, child molesters who were released from prison were at least six (6) times more likely to be rearrested for another sex crime against a child as compared to a non-sex offender released from prison. Based upon a 2019 study by the United States Department of Justice, Bureau of Justice Statistics, titled *Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14),* released sex offenders were more than three times as likely as other released prisoners to be arrested for rape or sexual assault, and released sex offenders accounted for 5% of releases in 2005 and 16% of arrests for rape or sexual assault during the 9-year follow-up period.

D. Whereas, in addition to reviewing the studies in C. above, the Common Council has also conducted a review of other reports and studies related to creating and implementing specific desistance factors to reduce recidivism of sex offenders. The studies and reports that have been reviewed include the following: *Recidivism After Release from Prison*, State of Wisconsin Department of Corrections, Tatar, J. & Jones, M. (August 2016); *Examining the Effects of Residential Situations and Residential Mobility on Offender Recidivism*, Crime and Delinquency 61(3), 375-401, Steiner, B., Makarios, M. D., & Travis, L. F. (2015);

Examining Sexual Offenses through a Sociological Lens A Socio-Cultural Exploration of Causal and Desistance Theories, European Journal of Probation, 8(3), 170-184, Kyle, D. (2016); *Criminal Careers in the Short-Term Intra-Individual Variability in Crime and Its Relation to Local Life Circumstances*, American Sociological Review, 60(5), 655-673, Horney, J., Osgood, W., & Marshall I.H., (1995); and *An Exploration of Protective Factors Supporting Desistance from Sexual Offending*, Sexual Abuse: A journal of Research and Treatment, 27(1), 16-33, Mann, R.E., de Vries Robbe, M., Maruna, S., & Thornton, D. (2015).

E. Whereas, the Common Council acknowledges that literature on sex offender recidivism, sex offender desistance, and sex offender residency restrictions contains studies which report varying effectiveness of certain strategies. The Common Council intends to use these strategies and studies to best create a regulatory framework which protects the children of the City of Franklin (hereinafter "City"), yet allows for a constructive and safe assimilation of designated sex offenders into the community.

F. [The Common Council finds that the risk of recidivism decreases over time from the date of the last conviction, especially in circumstances where offenders have community connections, goals, and employment. The Common Council is also aware that absent a domicile clause, the City would have open doors for non-resident sex offender residency when other communities have closed doors, inviting a substantial increase in child sex offender placements, thereby increasing potential negative impacts on the health, safety, welfare, and additional cost to the City and its residents. Studies show increased recidivism rates for offenders who frequently move or do not have established community networks. These studies support maintaining a domicile clause thereby limiting designated offenders with no ties to the community and increasing the likelihood that a designated offender implements appropriate and existing community support while allowing the community to remain intelligently attentive, aware, and provide adequate and appropriate intervention if needed.]

G. Accordingly, the Common Council has created this regulatory measure designed to protect the health and safety of the children in the City against the threat posed by certain designated sex offenders. Sex offenders who prey on children represent a substantial danger to victims, target a particularly vulnerable group within the community who are less able to articulate or report abuse, and create a significant impact on law enforcement time and community resources to investigate abuses and mitigate risks. This Chapter is also intended to

demonstrate the City's resolute goal of protecting children in areas of potential vulnerability and impart the community's necessary expectation that designated sex offenders released into the community must maintain the community's confidence by demonstrating safe, productive, and law-abiding behavior while residing within the City. It is the intent of the Common Council that this regulatory scheme is civil and non-punitive in order to serve the City's compelling interest to promote, protect, and improve the health, safety and welfare of all citizens of the City.

§167-2 Definitions. As used in this Chapter and unless the context otherwise requires:

A. A *Sexually Violent Offense* shall have the meaning as set forth in Wis. Stat. § 980.01(6).

B. A *Crime Against Children* shall mean any of the following offenses set forth within the Wisconsin Statutes, or the laws of this or any other state or the federal government, having like elements necessary for conviction, respectively:

§ 940.225(1) First Degree Sexual Assault;
§ 940.225(2) Second Degree Sexual Assault;
§ 940.225(3) Third Degree Sexual Assault;
§ 940.22(2) Sexual Exploitation by Therapist;
§ 940.30 False Imprisonment-victim was minor and not the offender's child;
§ 940.31 Kidnapping-victim was minor and not the offender's child;
§ 944.01 Rape (prior statute);
§ 944.06 Incest;
§ 944.10 Sexual Intercourse with a Child (prior statute);
§ 944.11 Indecent Behavior with a Child (prior statute);
§ 944.12 Enticing Child for Immoral Purposes (prior statute);
§ 948.02(1) First Degree Sexual Assault of a Child;
§ 948.02(2) Second Degree Sexual Assault of a Child;
§ 948.025 Engaging in Repeated Acts of Sexual Assault of the Same Child;
§ 948.05 Sexual Exploitation of a Child;
§ 948.055 Causing a Child to View or Listen to Sexual Activity;
§ 948.06 Incest with a Child;
§ 948.07 Child Enticement;
§ 948.075 Use of a Computer to Facilitate a Child Sex Crime;
§ 948.08 Soliciting a Child for Prostitution;

§ 948.095 Sexual Assault of a Child by a School Staff Person or a Person Who Works or Volunteers with Children;
§ 948.11(2)(a) or (am) Exposing Child to Harmful Material or Harmful Descriptions or Narrations – felony Sections;
§ 948.12 Possession of Child Pornography;
§ 948.13 Child Sex Offender Working with Children;
§ 948.30 Abduction of Another's Child; Constructive Custody
§ 971.17 Not Guilty by Reason of Mental Disease or Mental Defect - of an included offense; and
§ 975.06 Sex Crimes Law Commitment.

a. *Person* means a person who has been convicted of or has been found delinquent of or has been found not guilty by reason of disease or mental defect of a Sexually Violent Offense and/or a Crime Against Children.

b. *Residence ("reside")* means the place where a Person sleeps, which may include more than one location, and may be mobile or transitory.

§167-3 Residency restrictions.

A. A Person shall not reside within the City within [ ] feet of the real property comprising any of the following (whether located within the City or not):

(1) Any facility for children (which means a public or private school, a group home, as defined in Wis. Stat. § 48.02(7), a residential care center for children and youth, as defined in Wis. Stat. § 48.02(15d), a shelter care facility, as defined in Wis. Stat. § 48.02(17), a foster home, as defined in Wis. Stat. § 48.02(6), a child care center licensed under Wis. Stat. § 48.65, a child care program established under Wis. Stat. § 120.13(14), a child care provider certified under Wis. Stat. § 48.651, or a youth center, as defined in Wis. Stat. § 961.01(22); and/or

(2) Any facility used for:

i. A public park, parkway, parkland, park facility, nature preserve;
ii. A public swimming pool or beach;
iii. A public library;
iv. A recreational trail;
v. A public playground;
vi. A school for children;
vii. Athletic fields used by children;

viii. A movie theatre;
ix. A daycare center;
x. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school; and
xi. Aquatic facilities open to the public.

B. The distance shall be measured from the closest boundary line of the real property supporting the residence of a Person to the closest real property boundary line of the applicable above enumerated use(s). A map depicting the above enumerated uses and the resulting residency restriction distances, as amended from time to time, shall be kept on file in the office of the City Clerk for public inspection.

§167-4 Residency restriction exceptions.

A Person residing within [ ] feet of the real property comprising any of the uses enumerated in §167-3 above, does not commit a violation of this Chapter if any of the following apply:

A. The Person is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution or facility.

B. The Person has established a residence prior to the effective date of this Chapter, [_____], 2021, which is within [ ] feet of any of the uses enumerated in §167-3 above, or such enumerated use is newly established after such effective date and it is located within such [ ] feet of a residence of a Person which was established prior to the effective date of this Chapter.

C. The Person is a minor residing with a parent or legal guardian who serves as parent or legal guardian to no more than one Person.

[§167-5 Original domicile restriction.

In addition to and notwithstanding the foregoing, but subject to §167-4 above, no Person and no individual who has been convicted of a Sexually Violent Offense and/or a Crime Against Children, shall be permitted to reside in the City, unless such Person was domiciled in the City at the time of the offense resulting in the Person's most recent conviction for committing the Sexually Violent Offense and/or Crime Against Children.]

§167-6 Child safety zones.

A. No Person shall enter or be present upon any real property in the City upon which there exists any facility used for or which supports a use of:

(1) A public park, parkway, parkland, park facility or nature preserve;
(2) A public swimming pool or beach;
(3) A public library;
(4) A recreational trail;
(5) A public playground;
(6) A school for children;
(7) Athletic fields used by children;
(8) A movie theatre;
(9) A daycare center;
(10) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;
(11) Aquatic facilities open to the public; and
(12) Any facility for children (which means a public or private school, a group home, as defined in Wis. Stat. § 48.02(7), a residential care center for children and youth, as defined in Wis. Stat. § 48.02(15d), a shelter care facility, as defined in Wis. Stat. § 48.02(17), a foster home, as defined in Wis. Stat. § 48.02(6), a child care center licensed under Wis. Stat. § 48.65, a child care program established under Wis. Stat. § 120.13(14), a child care provider certified under Wis. Stat. § 48.651, or a youth center, as defined in Wis. Stat. § 961.01(22).

B. A map depicting the locations of the real property supporting the above enumerated uses, as amended from time to time, shall be kept on file in the office of the City Clerk for public inspection.

§167-7 Child safety zone exceptions.

A Person does not commit a violation of §167-6 and the enumerated uses may allow such Person on the property supporting such use if any of the following apply:

A. The property supporting an enumerated use under §167-6 also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:

(1) Entrance and presence upon the property occurs only during hours of worship or other religious program service as posted to the public;
(2) Written advance notice is made from the Person to an individual in charge of the church and approval from an individual in charge of the

church as designated by the church is made in return, of the attendance by the Person; and
(3) The Person shall not participate in any religious education programs which include individuals under the age of 18.

B. The property supporting an enumerated use under §167-6 also supports a use lawfully attended by a Person's natural or adopted child/children, which child's use reasonably requires the attendance of the Person as the child's parent upon the property, subject to the following conditions:

(1) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
(2) Written advance notice is made from the Person to an individual in charge of the use upon the property and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the Person.

C. The property supporting an enumerated use under §167-6 also supports a polling location in a local, state or federal election, subject to the following conditions:

(1) The Person is eligible to vote;
(2) The designated polling place for the Person is an enumerated use; and
(3) The Person enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate; and the Person vacates the property immediately after voting.

D. The property supporting an enumerated use under §167-6 also supports an elementary or secondary school lawfully attended by a Person as a student, under which circumstances the Person who is a student may enter upon that property supporting the school at which the Person is enrolled, as is reasonably required for the educational purposes of the school.

§167-8 Holiday events and public gatherings.

It is unlawful for any Person to actively take part in any public holiday event involving children under 18 years of age where the distributing of candy or other items to children takes place, including but not limited to Halloween trick or treating, holiday parades and other similar public gatherings. This section does not apply to any event in which the Person is

the parent or guardian of the children involved, and the Person's children are the only children present.

§167-9 Violations.

If a Person violates §167-3 above, by establishing a residence or occupying residential premises within [ ] feet of those premises as described therein, without any exception(s) as also set forth above, the City Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police that upon all of the facts and circumstances and the purpose of this Chapter, such residence or occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or others, shall bring an action in the name of the City in the Circuit Court for Milwaukee County to permanently enjoin such residency as a public nuisance. If a Person violates §167-6, in addition to the aforesaid injunctive relief, such Person shall be subject to the general penalty provisions set forth under §1-19 of this Code. Each day a violation continues shall constitute a separate offense. In addition, the City may undertake all other legal and equitable remedies to prevent or remove a violation of this Chapter, including, but not limited to a violation of §167-5.

§167-10 Appeal.

A designated offender may request an exemption from this Chapter.

A. Procedure. A designated offender may request an exemption from this Chapter by submitting a written request for exemption, including any pertinent rationale for an exemption, to the Franklin Police Department prior to establishing a residence that would be in violation of this Chapter or within thirty (30) days after notification that the designated offender is in violation of this Chapter. The Chief of Police or his/her designee shall conduct a review of the request for an exemption using any pertinent information and the criteria set forth in Subsection C. below. The Chief of Police or his/her designee shall approve, approve an exemption subject to necessary conditions (hereafter "conditional exemption"), or deny the request. The Chief of Police or his/her designee shall issue the decision within thirty (30) days of receiving the request for exemption and shall provide a written copy of that decision to the designated offender, City Clerk, and the City Attorney's office. Any request for an exemption which has not been approved, approved for a conditional exemption, or denied by the Chief or his/her designee within thirty (30) days of the request shall be deemed to be denied for the purposes of this Chapter.

B. The decision by the Chief of Police or his/her designee may be appealed by the designated offender within thirty (30) days by submitting a written appeal to the Sex Offender Residency Appeal Board (hereafter "the Board") via the City Clerk's Office. The Board shall hold a hearing on each appeal, during which the Board may review any pertinent information and may accept oral and written statements from any person.

C. The Chief of Police or his/her designee and/or the Board shall base their decision upon any factors related to the City's interest in promoting, protecting, and improving the health, safety, and welfare of the community, including but not limited to:

(1) The nature of the predicate offense causing the appellant to be a designated offender.
(2) Police reports related to the predicate offense if available.
(3) Proximity of the requested residence to the victim.
(4) The age of the offense, offender, and victim.
(5) Recommendation of the probation or parole officer, if one exists.
(6) Recommendation of the Police Department.
(7) Recommendation of any treatment practitioner.
(8) Proposals for safety measures and assurances by the designated offender.
(9) Conditions to be placed on any exception or variance from the requirements of this Chapter.
(10) Support systems in place by the designated offender.
(11) Who the designated offender will be or is living with at the prohibited location.
(12) Statements of the surrounding community or victim.
(13) Treatment, sobriety, or rehabilitative measures taken by the designated offender.
(14) The designated offender's current employment or social activities.
(15) The designated offender's criminal history.
(16) Whether the designated offender meets any of the exceptions listed in §167-4.

D. The Board shall issue a decision by a majority vote. The Board may decide to deny an exemption, issue an exemption, or issue a conditional exemption. A written copy of the decision shall be provided to the designated offender. A designated offender must consent to the terms of the conditional exemption for the conditional exemption to be valid, and must demonstrate acceptance of the terms of the conditional exemption by

signing and dating a copy of the Board's decision and conditions. The designated offender must provide a copy of the signed conditional exemption to the City Clerk's Office and the Franklin Police Department. The designated offender will have fourteen (14) days from the date the written conditional exemption is issued to accept and return a signed copy to the appropriate locations or the conditional exemption will be deemed as void and the appeal denied by the Board. A designated offender need not sign an exemption that has been denied by the Board or an exemption approved without any necessary conditions by the Board.

E. A conditional exemption may include, but is not limited to, the following terms:

(1) Curfew restrictions.
(2) Cohabitant restrictions or requirements.
(3) Sobriety restrictions.
(4) Conduct restrictions.
(5) Residency restrictions.

F. If an exemption or conditional exemption is granted by the Chief or his/her designee or the Board, that exemption will only apply to the specific designated offender who had applied for the exemption at the requested residence and shall not be transferable to any other designated offender or to any other location.

G. An exemption expires when the designated offender who was granted said exemption changes his/her domicile and/or changes his or her residence, whether within the City or outside the City.

H. An exemption or conditional exemption issued by the Chief or his/her designee or the Board may be revoked by the Chief or his/her designee if the designated offender is found to have violated the conditions or there is probable cause to believe the designated offender has committed (an) additional act(s), which had occurred either before or after the exemption or conditional exemption was issued, that would cause a person to be classified as a designated offender. The Chief or his/her designee shall provide written notice to the designated offender that the exemption or conditional exemption has been revoked. This notice shall be deemed properly delivered if sent by either first class mail to the designated offender's last known address or if delivered in person to the designated offender's last known address. If the designated offender cannot be located, the notice shall be deemed to be properly delivered if a copy is left at the designated offender's address which had been exempted in the presence of some competent member of the family at least fourteen (14) years of age or a competent adult currently residing there. The revocation

of an exemption may be appealed to the Board pursuant to the above procedure.

I. For the purposes of this Chapter, pursuant to Wisconsin Statute § 68.16, the City of Franklin is specifically electing not to be governed by Chapter 68 of the Wisconsin Statutes.

J. If the Board denies the request for exemption or upholds a revocation of exemption or conditional exemption, the designated offender may appeal the decision within thirty (30) days to the Milwaukee County Circuit Court.

K. The Sex Offender Residency Appeal Board shall consist of five City residents. Members shall be appointed by the Mayor and confirmed by the Common Council. Members shall serve in staggered, three year terms with the initial Board having two members with three year terms; two members with two year terms; and a single member with a one year term.

§167-11 Exception for placements under Wis. Stat. Chapter 980.

To the extent required by Wis. Stat. § 980.135, and notwithstanding the foregoing provisions of this Chapter, the City of Franklin hereby exempts and may not enforce any portion of this Chapter that restricts or prohibits a sex offender from residing at a certain location or that restricts or prohibits a person from providing housing to a sex offender against an individual who is released under Wis. Stat. § 980.08, or against a person who provides housing to such individual, so long as the individual is subject to supervised release under Wis. Stat. Chapter 980, the individual is residing where he or she is ordered to reside under Wis. Stat. § 980.08, and the individual is in compliance with all court orders issued under Wis. Stat. Chapter 980.

SECTION 2: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 3: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 4: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025, by Alderperson _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025.

APPROVED:

_____
John R. Nelson, Mayor

ATTEST:

_____
Shirley J. Roberts, City Clerk

AYES _____ NOES _____ ABSENT _____

Chapter 167

SEX OFFENDERS

[HISTORY: Adopted by the Common Council of the City of Franklin 12-5-2006 by Ord. No. 2006-1901[1]; amended in its entirety 1-9-2007 by Ord. No. 2007-1905. Subsequent amendments noted where applicable.]

§ 167-1. Purpose.

This chapter is a regulatory measure aimed at protecting the health and safety of children in Franklin from the risk that convicted sex offenders may reoffend in locations close to their residences. The City finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. Given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of reoffense, there is a need to protect children where they congregate or play in public places in addition to the protections afforded by state law near schools, day-care centers and other places children frequent. The City finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.

§ 167-2. Definitions.

As used in this chapter and unless the context otherwise requires:

CRIME AGAINST CHILDREN — Any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or the federal government, having like elements necessary for conviction, respectively:

§ 940.225(1)	First degree sexual assault
§ 940.225(2)	Second degree sexual assault
§ 940.225(3)	Third degree sexual assault
§ 940.22(2)	Sexual exploitation by therapist
§ 940.30	False imprisonment - victim was minor and not the offender's child

1. Editor's Note: This ordinance also superseded former Ch. 167, Sex Offenders, adopted 11-21-2006 by Ord. No. 2006-1895.

§ 940.31	Kidnapping - victim was minor and not the offender's child
§ 944.01	Rape (prior statute)
§ 944.06	Incest
§ 944.10	Sexual intercourse with a child (prior statute)
§ 944.11	Indecent behavior with a child (prior statute)
§ 944.12	Enticing child for immoral purposes (prior statute)
§ 948.02(1)	First degree sexual assault of a child
§ 948.02(2)	Second degree sexual assault of a child
§ 948.025	Engaging in repeated acts of sexual assault of the same child
§ 948.05	Sexual exploitation of a child
§ 948.055	Causing a child to view or listen to sexual activity
§ 948.06	Incest with a child
§ 948.07	Child enticement
§ 948.075	Use of a computer to facilitate a child sex crime
§ 948.08	Soliciting a child for prostitution
§ 948.095	Sexual assault of a student by school instructional staff
§ 948.11(2)(a) or (am)	Exposing child to harmful material-felony sections
§ 948.12	Possession of child pornography
§ 948.13	Convicted child sex offender working with children
§ 948.30	Abduction of another's child
§ 971.17	Not guilty by reason of mental disease - of an included offense
§ 975.06	Sex Crimes Law, commitment

PERSON — A person who has been convicted of or has been found delinquent of or has been found not guilty by reason of disease or mental defect of a sexually violent offense and/or a crime against children.

RESIDENCE (RESIDE) — The place where a person sleeps, which may include more than one location and may be mobile or transitory.

SEXUALLY VIOLENT OFFENSE — Shall have the meaning as set forth in § 980.01(6), Wis. Stats., as amended from time to time.

§ 167-3. Residency restrictions.

A. A person shall not reside within 2,000 feet of the real property comprising any of the following:

(1) Any facility for children [which means a public or private school or a group home, as defined in § 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats.; a shelter care facility, as defined in § 48.02(17), Wis. Stats.; a foster home, as defined in § 48.02(6), Wis. Stats.; a treatment foster home, as defined in § 48.02(17q), Wis. Stats.; a day-care center licensed under § 48.65, Wis. Stats.; a day-care program established under § 120.13 (14), Stats.; a day care provider certified under § 48.651, Wis. Stats.; or a youth center, as defined in § 961.01(22), Wis. Stats.)]; and/or

(2) Any facility used for:

(a) A public park, parkway, parkland, park facility;

(b) A public swimming pool;

(c) A public library;

(d) A recreational trail;

(e) A public playground;

(f) A school for children;

(g) Athletic fields used by children;

(h) A movie theater;

(i) A day-care center;

(j) The Milwaukee County Sports Complex and grounds;

(k) A ski hill open to the public;

(l) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;

(m) A public or private golf course or range; and

(n) Aquatic facilities open to the public.

B. The distance shall be measured from the closest boundary line of the real property supporting the residence of a person to the closest real property boundary line of the applicable above-enumerated use(s). A map depicting the above-enumerated uses and the resulting residency restriction distances, as amended from time to time, are on file in the office of the City Clerk for public inspection.

§ 167-4. Residency restriction exceptions.

A person residing within 2,000 feet of the real property comprising any of the uses enumerated in § 167-3, above, does not commit a violation of this chapter if any of the following apply:

A. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.

B. The person has established a residence prior to the effective date of this chapter on December 16, 2006, which is within 2,000 feet of any of the uses enumerated in § 167-3, above, or such enumerated use is newly established after such effective date and it is located within such 2,000 feet of a residence of a person which was established prior to the effective date of this chapter.

C. The person is a minor or ward under guardianship.

§ 167-5. Original domicile restriction.

In addition to and notwithstanding the foregoing, but subject to § 167-4, above, no person and no individual who has been convicted of a sexually violent offense and/or a crime against children shall be permitted to reside in the City of Franklin, unless such person was domiciled in the City of Franklin at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense and/or crime against children.

§ 167-6. Child safety zones.

A. No person shall enter or be present upon any real property upon which there exists any facility used for or which supports a use of:

(1) A public park, parkway, parkland, park facility;

(2) A public swimming pool;

(3) A public library;

(4) A recreational trail;

(5) A public playground;

(6) A school for children;

(7) Athletic fields used by children;

(8) A movie theater;

(9) A day-care center;

(10) The Milwaukee County Sports Complex and grounds;

(11) A ski hill open to the public;

(12) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;

(13) A public or private golf course or range;

(14) Aquatic facilities open to the public; and

(15) Any facility for children [which means a public or private school or a group home, as defined in § 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats.; a shelter care facility, as defined in § 48.02(17), Wis. Stats.; a foster home, as defined in § 48.02(6), Wis. Stats.; a treatment foster home, as defined in § 48.02(17q), Wis. Stats.; a day-care center licensed under § 48.65, Wis. Stats.; a day-care program established under § 120.13(14), Wis. Stats.; a day-care provider certified under § 48.651, Wis. Stats.; or a youth center, as defined in § 961.01(22), Wis. Stats.].

B. A map depicting the locations of the real property supporting the above-enumerated uses, as amended from time to time, is on file in the office of the City Clerk for public inspection.

§ 167-7. Child safety zone exceptions.

A person does not commit a violation of § 167-6, above, and the enumerated uses may allow such person on the property supporting such use if any of the following apply:

A. The property supporting an enumerated use under § 167-6, also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:

(1) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and

(2) Written advance notice is made from the person to an individual in charge of the church, and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the person; and

(3) The person shall not participate in any religious education programs which include individuals under the age of 18.

B. The property supporting an enumerated use under § 167-6 also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person as the child's parent upon the property, subject to the following conditions:

(1) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and

(2) Written advance notice is made from the person to an individual in charge of the use upon the property, and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the person.

C. The property supporting an enumerated use under § 167-6 also supports a polling location in a local, state or federal election, subject to the following conditions:

(1) The person is eligible to vote;

(2) The designated polling place for the person is an enumerated use; and

(3) The person enters the polling place property and proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate, and the person vacates the property immediately after voting.

D. The property supporting an enumerated use under § 167-6 also supports an elementary or secondary school lawfully attended by a person as a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.

§ 167-8. Violations and penalties. [Amended 10-1-2013 by Ord. No. 2013-2116]

If a person violates § 167-3, above, by establishing a residence or occupying residential premises within 2,000 feet of those premises as described therein, without any exception(s) as also set forth above, the City Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police that upon all of the facts and circumstances and the purpose of this chapter such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health or safety of another or others, shall bring an action in the name of the City in the Circuit Court for Milwaukee County to permanently enjoin such residency as a public nuisance. If a person violates § 167-6 or 167-9, in addition to the aforesaid injunctive relief, such person shall be subject to the general penalty provisions set forth under § 1-19 of the Municipal Code. Each day a violation continues shall constitute a separate offense. In addition, the City may undertake all other legal and equitable remedies to prevent or remove a violation of this chapter.

§ 167-9. Holiday events and public gatherings. [Added 10-1-2013 by Ord. No. 2013-2116]

It is unlawful for any person to actively take part in any public holiday event involving children under 18 years of age where the distributing of candy or other items to children takes place, including but not limited to Halloween trick or treating, holiday parades and other similar public gatherings. This section does not apply to any event in which the person is the parent or guardian of the children involved, and the person's children are the only children present.

122 S.Ct. 2017
Supreme Court of the United States

David R. McKUNE, Warden, et al., Petitioners,

v.

Robert G. LILE.

No. 00-1187.
Argued Nov. 28, 2001.Decided June 10, 2002.

Synopsis

State inmate brought § 1983 claim against prison officials, alleging that sexual abuse treatment program and corresponding regulations and policies violated his Fifth Amendment right against self-incrimination. The United States District Court for the District of Kansas, Dale E. Saffels, J., 24 F.Supp.2d 1152, granted summary judgment for inmate. The United States Court of Appeals for the Tenth Circuit, McKay, Circuit Judge, 224 F.3d 1175, affirmed, and certiorari was granted. The Supreme Court, Justice Kennedy, held that adverse consequences faced by state prisoner for refusing to make admissions required for participation in sexual abuse treatment program were not so severe as to amount to compelled self-incrimination.

Reversed and remanded.

Justice O'Connor concurred in judgment and filed opinion.
Justice Stevens dissented and filed opinion in which Justices Souter, Ginsburg and Breyer joined.

West Headnotes (9)

1 Prisons Sex-offender treatment
State's sexual abuse treatment program for prisoners served legitimate penological objective of rehabilitation; program lasted 18 months, involved substantial daily counseling, and helped inmates address sexual addiction, understand thoughts, feelings, and behavior dynamics that preceded their offenses, and develop relapse prevention skills.
54 Cases that cite this headnote

2 Criminal Law Grounds or justification for grant of immunity
Prisons Sex-offender treatment
State's refusal to offer immunity from prosecution, based on admissions of responsibility required of state prisoners under sexual abuse treatment program, served legitimate state interests; potential for additional punishment aided rehabilitation by reinforcing gravity of participants' offenses, and state had valid interest in keeping open option to prosecute particularly dangerous sex offenders.
156 Cases that cite this headnote

3 Criminal Law Compelling Self-Incrimination
Privilege against self-incrimination does not terminate at jailhouse door, but fact of valid conviction and ensuing restrictions on liberty are essential to Fifth Amendment analysis; broad range of choices that might infringe constitutional rights in free society fall within expected conditions of confinement of those who have suffered lawful conviction. U.S.C.A. Const.Amend. 5.
80 Cases that cite this headnote

4 Criminal Law Compelling Self-Incrimination
Prisons Sex-offender treatment
Prison clinical rehabilitation program, which is acknowledged to bear rational relation to legitimate penological objective, does not violate privilege against compelled self-incrimination if adverse consequences inmate faces for not participating are related to program objectives and do not constitute atypical and significant hardships in relation to ordinary incidents of prison life. (Per Justice Kennedy,

with the Chief Justice and two Justices concurring, and one Justice concurring in judgment). U.S.C.A. Const.Amend. 5.
171 Cases that cite this headnote
5 Criminal Law Compelling Self-Incrimination
Prisons Sex-offender treatment
Prisons Sex offenses and offenders
Adverse consequences faced by state prisoner for refusing to make admissions required for participation in sexual abuse treatment program were not so severe as to amount to compelled self-incrimination; refusal did not extend prisoner's prison term or affect his eligibility for good time credits or parole, but rather left him subject to reduction of privileges and transfer out of unit where program was being offered. U.S.C.A. Const.Amends. 5, 14.
200 Cases that cite this headnote
6 Prisons Housing assignments and units; transfer within facility
Decision where to house inmates is at core of prison administrators' expertise.
309 Cases that cite this headnote
7 Prisons Care, Custody, Confinement, and Control
Essential tool of prison administration is authority to offer inmates various incentives to behave, and Constitution accords prison officials wide latitude to bestow or revoke these perquisites as they see fit.
92 Cases that cite this headnote
8 Prisons Particular violations, punishments, deprivations, and conditions
Determining what constitutes unconstitutional compulsion in prison context involves question of judgment; court must decide whether consequences of inmate's choice to remain silent are closer to physical torture against which Constitution clearly protects or de minimis harms against which it does not. U.S.C.A. Const.Amend. 5.
37 Cases that cite this headnote
9 Criminal Law Compelling Self-Incrimination
Government does not have to make exercise of Fifth Amendment privilege against self-incrimination cost free. U.S.C.A. Const.Amend. 5.
91 Cases that cite this headnote

***2019 *24 Syllabus**[*]

Respondent was convicted of rape and related crimes. A few years before his scheduled release, Kansas prison officials ordered respondent to participate in a Sexual Abuse Treatment Program (SATP). As part of the program, participating inmates are required to complete and sign an "Admission of Responsibility" form, in which they accept responsibility for the crimes for which they have been sentenced, and complete a sexual history form detailing all prior sexual activities, regardless of whether the activities constitute uncharged criminal offenses. The information obtained from SATP participants is not privileged, and might be used against them in future criminal proceedings. There is no evidence, however, that incriminating information has ever been disclosed under the SATP. Officials informed respondent that if he refused to participate in the SATP, his prison privileges would be reduced, resulting in the automatic curtailment of his visitation rights, earnings, work opportunities, ability to send money to family, canteen expenditures, access to a personal television, and other privileges. He also would be transferred to a potentially more dangerous maximum-security unit. Respondent refused to participate in the SATP on the ground that the required disclosures of his criminal history would violate his Fifth Amendment privilege against compelled self-incrimination. He brought this action for injunctive relief under 42 U.S.C. § 1983. The District Court granted him summary judgment. Affirming, the Tenth Circuit held that the compelled self-incrimination prohibited by the Fifth Amendment can be established by penalties that do not constitute deprivations of protected liberty interests under the Due Process Clause; ruled that the automatic reduction in respondent's prison privileges and housing accommodations was such a penalty because of its substantial impact on him; declared that respondent's information would be sufficiently incriminating because an admission of culpability regarding his crime of conviction would

create a risk of a perjury prosecution, and concluded that, although the SATP served Kansas' important interests in rehabilitating sex offenders and promoting public safety, those interests could be served without violating the Constitution by treating inmate admissions as privileged or by granting inmates use immunity.

Held The judgment is reversed, and the case is remanded

224 F.3d 1175, reversed and remanded.

***25** Justice KENNEDY, joined by THE CHIEF JUSTICE, Justice SCALIA, and Justice THOMAS, concluded that the SATP serves a vital penological purpose, and that offering inmates minimal incentives to participate does not amount to compelled self-incrimination prohibited by the Fifth Amendment Pp. 2024-2032.

(a) The SATP is supported by the legitimate penological objective of rehabilitation. The SATP lasts 18 months; involves substantial daily counseling; and helps inmates address sexual addiction, understand the thoughts, feelings, and behavior dynamics that precede their offenses, and develop relapse prevention skills. Pp. 2024-2025

(b) The mere fact that Kansas does not offer legal immunity from prosecution based on statements made in the course of the SATP does not render the program invalid. No inmate has ever been charged or prosecuted for any offense based on such information, and there is no contention that the program is a mere subterfuge ***2020** for the conduct of a criminal investigation. Rather, the refusal to offer use immunity serves two legitimate state interests. (1) The potential for additional punishment reinforces the gravity of the participants' offenses and thereby aids in their rehabilitation; and (2) the State confirms its valid interest in deterrence by keeping open the option to prosecute a particularly dangerous sex offender. P. 2025.

(c) The SATP, and the consequences for nonparticipation in it, do not combine to create a compulsion that encumbers the constitutional right not to incriminate oneself. Pp. 2025-2032.

(1) The prison context is important in weighing respondent's constitutional claim: A broad range of choices that might infringe constitutional rights in a free society fall within the expected conditions of confinement of those lawfully convicted. The limitation on prisoners' privileges and rights also follows from the need to grant necessary authority and capacity to officials to administer the prisons. See, *e.g., Turner v Safley,* 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64. The Court's holding in *Sandin v Conner,* 515 U.S. 472, 484, 115 S.Ct. 2293, 132 L.Ed.2d 418, that challenged prison conditions cannot give rise to a due process violation unless they constitute "atypical and significant hardship[s] on [inmates] in relation to the ordinary incidents of prison life," may not provide a precise parallel for determining whether there is compelled self-incrimination, but does provide useful instruction. A prison clinical rehabilitation program, which is acknowledged to bear a rational relation to a legitimate penological objective, does not violate the privilege against compelled self-incrimination if the adverse consequences an inmate faces for not participating are related to the program objectives and do not constitute atypical and significant hardships in relation to the ordinary incidents of prison life Cf., *e g, Baxter v Palmigiano,* 425 U.S. 308, 319-320, 96 S.Ct. 1551, 47 L.Ed.2d 810. Pp. 2025-2027

***26** (2) Respondent's decision not to participate in the SATP did not extend his prison term or affect his eligibility for good-time credits or parole. He instead complains about his possible transfer from the medium-security unit where the program is conducted to a less desirable maximum-security unit. The transfer, however, is not intended to punish prisoners for exercising their Fifth Amendment rights Rather, it is incidental to a legitimate penological reason Due to limited space, inmates who do not participate in

their respective programs must be moved out of the facility where the programs are held to make room for other inmates. The decision where to house inmates is at the core of prison administrators' expertise. See *Meachum v. Fano,* 427 U.S. 215, 225, 96 S.Ct. 2532, 49 L.Ed.2d 451. Respondent also complains that his privileges will be reduced. An essential tool of prison administration, however, is the authority to offer inmates various incentives to behave. The Constitution accords prison officials wide latitude to bestow or revoke these perquisites as they see fit. See *Hewitt v. Helms,* 459 U.S. 460, 467, n. 4, 103 S.Ct. 864, 74 L.Ed.2d 675. Respondent fails to cite a single case from this Court holding that the denial of discrete prison privileges for refusal to participate in a rehabilitation program amounts to unconstitutional compulsion. Instead, he relies on the so-called penalty cases, see, *e.g., Spevack v. Klein,* 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574, which involved free citizens given the choice between invoking the Fifth Amendment privilege and sustaining their economic livelihood, see, *e.g., id.,* at 516, 87 S.Ct. 625. Those cases did not involve legitimate rehabilitative programs conducted within prison walls, and they are not easily extended to the prison context, where inmates surrender their rights to pursue a livelihood and to contract freely with the State. Pp. 2027-2028.

(3) Determining what constitutes unconstitutional compulsion involves a question of judgment: Courts must decide ***2021** whether the consequences of an inmate's choice to remain silent are closer to the physical torture against which the Constitution clearly protects or the *de minimis* harms against which it does not. The *Sandin* framework provides a reasonable means of assessing whether the response of prison administrators to correctional and rehabilitative necessities are so out of the ordinary that one could sensibly say they rise to the level of unconstitutional compulsion. Pp. 2028-2029.

(d) Prison context or not, respondent's choice is marked less by compulsion than by choices the Court has held give no rise to a self-incrimination claim. The cost to respondent of exercising his Fifth Amendment privilege-denial of certain perquisites that make his life in prison more tolerable-is much less than that borne by the defendant in, *e.g., McGautha v. California,* 402 U.S. 183, 217, 91 S.Ct. 1454, 28 L.Ed.2d 711, where the Court upheld a procedure that allowed statements made by a criminal defendant *27 to mitigate his responsibility and avoid the death penalty to be used against him as evidence of his guilt. The hard choices faced by the defendants in, *e.g., Baxter v. Palmigiano, supra,* at 313, 96 S.Ct. 1551; *Ohio Adult Parole Authority v. Woodard,* 523 U.S. 272, 287-288, 118 S.Ct. 1244, 140 L.Ed.2d 387; and *Minnesota v. Murphy,* 465 U.S. 420, 422, 104 S.Ct. 1136, 79 L.Ed.2d 409, further illustrate that the consequences respondent faced did not amount to unconstitutional compulsion. Respondent's attempt to distinguish the latter cases on dual grounds-that (1) the penalty here followed automatically from his decision to remain silent, and (2) his participation in the SATP was involuntary-is unavailing. Neither distinction would justify departing from this Court's precedents. Pp. 2029-2031.

(e) Were respondent's position to prevail, there would be serious doubt about the constitutionality of the federal sex offender treatment program, which is comparable to the Kansas program. Respondent is mistaken as well to concentrate on a so-called reward/penalty distinction and an illusory baseline against which a change in prison conditions must be measured. Finally, respondent's analysis would call into question the constitutionality of an accepted feature of federal criminal law, the downward adjustment of a sentence for acceptance of criminal responsibility. Pp. 2031-2032.

Justice O'CONNOR acknowledged that the Court is divided on the appropriate standard for evaluating compulsion for purposes of the Fifth Amendment privilege against self-incrimination in a prison setting, but concluded that she need not resolve this dilemma because this case indisputably involves burdens rather than benefits, and because the penalties assessed against respondent as a result of his failure to participate in the Sexual Abuse Treatment Program (SATP) are not compulsive on any reasonable test. The Fifth Amendment's text does not prohibit all penalties levied in response to a person's refusal to incriminate himself or herself-it prohibits only the compulsion of such testimony. The Court's so-called "penalty cases" establish that the potential loss of one's livelihood through, *e.g.,* the loss of

employment, *Uniformed Sanitation Men Ass'n, Inc. v. Commissioner of Sanitation of City of New York,* 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089, and the loss of the right to participate in political associations and to hold public office, *Lefkowitz v. Cunningham,* 431 U.S. 801, 97 S.Ct. 2132, 53 L.Ed.2d 1, are capable of coercing incriminating testimony. Such penalties, however, are far more significant that those facing respondent: a reduction in incentive level and a corresponding transfer from medium to maximum security. In practical terms, these changes involve restrictions on respondent's prison privileges and living conditions that seem minor. Because the prison is responsible for caring for respondent's basic needs, his ability to support himself is not implicated ***28*** by the reduction ****2022*** of his prison wages. While his visitation is reduced, he still retains the ability to see his attorney, his family, and clergy. The limitation on his possession of personal items, as well as the amount he is allowed to spend at the canteen, may make his prison experience more unpleasant, but seems very unlikely to actually compel him to incriminate himself. Because it is his burden to prove compulsion, it may be assumed that the prison is capable of controlling its inmates so that respondent's personal safety is not jeopardized by being placed in maximum security, at least in the absence of proof to the contrary. Finally, the mere fact that the penalties facing respondent are the same as those imposed for prison disciplinary violations does not make them coercive. Thus, although the plurality's failure to set forth a comprehensive theory of the Fifth Amendment privilege against self-incrimination is troubling, its determination that the decision below should be reversed is correct. Pp. 2032-2035.

KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which REHNQUIST, C.J., and SCALIA and THOMAS, JJ., joined. O'CONNOR, J.,filed an opinion concurring in the judgment, *post,* p. 2032. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined, *post,* p. 2035.

Attorneys and Law Firms

Stephen R. McAllister, for petitioners.
Gregory G. Garre, Washington, DC, for United States as amicus curiae, by special leave of the Court, supporting the petitioners.
Matthew J. Wiltanger, Overland Park, KS, for respondent.

Opinion

29 Justice KENNEDY announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, Justice SCALIA, and Justice THOMAS join.

Respondent Robert G. Lile is a convicted sex offender in the custody of the Kansas Department of Corrections (Department). A few years before respondent was scheduled to reenter society, Department officials recommended that he enter a prison treatment program so that he would not rape again upon release. While there appears to be some difference of opinion among experts in the field, Kansas officials and officials who administer the United States prison system have made the determination that it is of considerable importance for the program participant to admit having committed the crime for which he is being treated and other past offenses. The first and in many ways most crucial step in the Kansas rehabilitation program thus requires the participant to confront his past crimes so that he can begin to understand his own motivations and weaknesses. As this initial step can be a most difficult one, Kansas offers sex offenders incentives to participate in the program.

Respondent contends this incentive system violates his Fifth Amendment privilege against self-incrimination. Kansas' rehabilitation program, however, serves a vital penological purpose, and offering

inmates minimal incentives to participate does not amount to compelled self-incrimination prohibited by the Fifth Amendment.

I

In 1982, respondent lured a high school student into his car as she was returning home from school. At gunpoint, respondent forced the victim to perform oral sodomy on him ***30*** and then drove to a field where he raped her. After the sexual assault, the victim went to her school, where, crying and upset, she reported the crime. The police arrested respondent ****2023*** and recovered on his person the weapon he used to facilitate the crime. *State v. Lile,* 237 Kan. 210, 211-212, 699 P.2d 456, 457-458 (1985). Although respondent maintained that the sexual intercourse was consensual, a jury convicted him of rape, aggravated sodomy, and aggravated kidnaping. Both the Kansas Supreme Court and a Federal District Court concluded that the evidence was sufficient to sustain respondent's conviction on all charges. See *id.,* at 211, 699 P.2d, at 458; 45 F.Supp.2d 1157, 1161 (Kan.1999).

In 1994, a few years before respondent was scheduled to be released, prison officials ordered him to participate in a Sexual Abuse Treatment Program (SATP). As part of the program, participating inmates are required to complete and sign an "Admission of Responsibility" form, in which they discuss and accept responsibility for the crime for which they have been sentenced. Participating inmates also are required to complete a sexual history form, which details all prior sexual activities, regardless of whether such activities constitute uncharged criminal offenses. A polygraph examination is used to verify the accuracy and completeness of the offender's sexual history.

While information obtained from participants advances the SATP's rehabilitative goals, the information is not privileged. Kansas leaves open the possibility that new evidence might be used against sex offenders in future criminal proceedings. In addition, Kansas law requires the SATP staff to report any uncharged sexual offenses involving minors to law enforcement authorities. Although there is no evidence that incriminating information has ever been disclosed under the SATP, the release of information is a possibility.

Department officials informed respondent that if he refused to participate in the SATP, his privilege status would be reduced from Level III to Level I. As part of this reduction, ***31*** respondent's visitation rights, earnings, work opportunities, ability to send money to family, canteen expenditures, access to a personal television, and other privileges automatically would be curtailed. In addition, respondent would be transferred to a maximum-security unit, where his movement would be more limited, he would be moved from a two-person to a four-person cell, and he would be in a potentially more dangerous environment.

Respondent refused to participate in the SATP on the ground that the required disclosures of his criminal history would violate his Fifth Amendment privilege against self-incrimination. He brought this action under Rev. Stat. § 1979, 42 U.S.C. § 1983, against the warden and the secretary of the Department, seeking an injunction to prevent them from withdrawing his prison privileges and transferring him to a different housing unit.

After the parties completed discovery, the United States District Court for the District of Kansas entered summary judgment in respondent's favor. 24 F.Supp.2d 1152 (1998). The District Court noted that because respondent had testified at trial that his sexual intercourse with the victim was consensual, an acknowledgment of responsibility for the rape on the "Admission of Guilt" form would subject respondent to a possible charge of perjury. *Id.,* at 1157. After reviewing the specific loss of privileges and change in conditions of confinement that respondent would face for refusing to incriminate himself, the District Court concluded that these consequences constituted coercion in violation of the Fifth Amendment.

The Court of Appeals for the Tenth Circuit affirmed. 224 F.3d 1175 (2000). It held that the compulsion element of a Fifth Amendment claim can be established by penalties that do not constitute deprivations of protected liberty interests under the Due Process Clause. *Id.,* at 1183. It held that the reduction in prison privileges and housing accommodations was a penalty, both because of its substantial impact 32 ***32***on the inmate and because that impact was identical to the punishment imposed ****2024*** by the Department for serious disciplinary infractions. In the Court of Appeals' view, the fact that the sanction was automatic, rather than conditional, supported the conclusion that it constituted compulsion. Moreover, because all SATP files are subject to disclosure by subpoena, and an admission of culpability regarding the crime of conviction would create a risk of a perjury prosecution, the court concluded that the information disclosed by respondent was sufficiently incriminating. *Id.,* at 1180. The Court of Appeals recognized that the Kansas policy served the State's important interests in rehabilitating sex offenders and promoting public safety. It concluded, however, that those interests could be served without violating the Constitution, either by treating the admissions of the inmates as privileged communications or by granting inmates use immunity. *Id.,* at 1192.

We granted the warden's petition for certiorari because the Court of Appeals has held that an important Kansas prison regulation violates the Federal Constitution. 532 U.S. 1018, 121 S.Ct. 1955, 149 L.Ed.2d 752 (2001).

II

Sex offenders are a serious threat in this Nation. In 1995, an estimated 355,000 rapes and sexual assaults occurred nationwide. U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 1 (1997) (hereinafter Sex Offenses); U.S. Dept. of Justice, Federal Bureau of Investigation, Crime in the United States, 1999, Uniform Crime Reports 24 (2000). Between 1980 and 1994, the population of imprisoned sex offenders increased at a faster rate than for any other category of violent crime. See Sex Offenses 18. As in the present case, the victims of sexual assault are most often juveniles. In 1995, for instance, a majority of reported forcible sexual offenses were committed against persons under 18 years of age. University of New Hampshire, Crimes Against Children Research Center, Fact Sheet 5; Sex Offenses 24. Nearly 4 in 10 imprisoned violent ***33*** sex offenders said their victims were 12 or younger. *Id.,* at *iii.*

When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See *id.,* at 27; U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997). States thus have a vital interest in rehabilitating convicted sex offenders.

Therapists and correctional officers widely agree that clinical rehabilitative programs can enable sex offenders to manage their impulses and in this way reduce recidivism. See U.S. Dept. of Justice, Nat. Institute of Corrections, A Practitioner's Guide to Treating the Incarcerated Male Sex Offender xiii (1988) ("[T]he rate of recidivism of treated sex offenders is fairly consistently estimated to be around 15%," whereas the rate of recidivism of untreated offenders has been estimated to be as high as 80%. "Even if both of these figures are exaggerated, there would still be a significant difference between treated and untreated individuals"). An important component of those rehabilitation programs requires participants to confront their past and accept responsibility for their misconduct. *Id.,* at 73. "Denial is generally regarded as a main impediment to successful therapy," and "[t]herapists depend on offenders' truthful descriptions of events leading to past offences in order to determine which behaviours need to be targeted in therapy." H. Barbaree, Denial and Minimization Among Sex Offenders: Assessment and Treatment Outcome, 3 Forum on Corrections Research, No. 4, p. 30 (1991). Research indicates that offenders who deny all allegations of sexual abuse are three times more likely to fail in treatment than those who admit even partial complicity. See B. Maletzky & K. McGovern, Treating the Sexual Offender 253-255 (1991).

**2025 The critical first step in the Kansas SATP, therefore, is acceptance of responsibility for past offenses. This gives inmates a basis to understand why they are being punished *34 and to identify the traits that cause such a frightening and high risk of recidivism. As part of this first step, Kansas requires each SATP participant to complete an "Admission of Responsibility" form, to fill out a sexual history form discussing their offending behavior, and to discuss their past behavior in individual and group counseling sessions.

1 The District Court found that the Kansas SATP is a valid "clinical rehabilitative program," supported by a "legitimate penological objective" in rehabilitation. 24 F.Supp.2d, at 1163. The SATP lasts for 18 months and involves substantial daily counseling. It helps inmates address sexual addiction; understand the thoughts, feelings, and behavior dynamics that precede their offenses; and develop relapse prevention skills. Although inmates are assured of a significant level of confidentiality, Kansas does not offer legal immunity from prosecution based on any statements made in the course of the SATP. According to Kansas, however, no inmate has ever been charged or prosecuted for any offense based on information disclosed during treatment. Brief for Petitioners 4-5. There is no contention, then, that the program is a mere subterfuge for the conduct of a criminal investigation.

2 As the parties explain, Kansas' decision not to offer immunity to every SATP participant serves two legitimate state interests. First, the professionals who design and conduct the program have concluded that for SATP participants to accept full responsibility for their past actions, they must accept the proposition that those actions carry consequences. Tr. of Oral Arg. 11. Although no program participant has ever been prosecuted or penalized based on information revealed during the SATP, the potential for additional punishment reinforces the gravity of the participants' offenses and thereby aids in their rehabilitation. If inmates know society will not punish them for their past offenses, they may be left with the false impression that society does not consider those crimes to be serious ones. The practical effect of guaranteed *35 immunity for SATP participants would be to absolve many sex offenders of any and all cost for their earlier crimes. This is the precise opposite of the rehabilitative objective.

Second, while Kansas as a rule does not prosecute inmates based upon information revealed in the course of the program, the State confirms its valid interest in deterrence by keeping open the option to prosecute a particularly dangerous sex offender. Brief for 18 States as *Amici Curiae* 11. Kansas is not alone in declining to offer blanket use immunity as a condition of participation in a treatment program. The Federal Bureau of Prisons and other States conduct similar sex offender programs and do not offer immunity to the participants. See, *e.g., Ainsworth v. Risley,* 244 F.3d 209, 214 (C.A.1 2001) (describing New Hampshire's program).

The mere fact that Kansas declines to grant inmates use immunity does not render the SATP invalid. Asking at the outset whether prison administrators can or should offer immunity skips the constitutional inquiry altogether. If the State of Kansas offered immunity, the self-incrimination privilege would not be implicated. See, *e.g., Kastigar v. United States,* 406 U.S. 441, 453, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972); *Brown v. Walker,* 161 U.S. 591, 610, 16 S.Ct. 644, 40 L.Ed. 819 (1896). The State, however, does not offer immunity. So the central question becomes whether the State's program, and the consequences for nonparticipation in it, combine to create a compulsion that encumbers the constitutional right. If there is compulsion, the State cannot continue the program in its present form; and the alternatives, as will be discussed, defeat the program's objectives.

**2026 The SATP does not compel prisoners to incriminate themselves in violation of the Constitution. The Fifth Amendment Self-Incrimination Clause, which applies to the States via the Fourteenth Amendment, *Malloy v. Hogan,* 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964), provides that no person "shall be compelled in any criminal case to be a witness against himself." The "Amendment speaks of compulsion," *36 *United States v. Monia,* 317 U.S. 424, 427, 63 S.Ct. 409, 87 L.Ed. 376 (1943), and the

Court has insisted that the "constitutional guarantee is only that the witness not be *compelled* to give self-incriminating testimony." *United States v Washington,* 431 U.S 181, 188, 97 S.Ct 1814, 52 L Ed.2d 238 (1977). The consequences in question here-a transfer to another prison where television sets are not placed in each inmate's cell, where exercise facilities are not readily available, and where work and wage opportunities are more limited-are not ones that compel a prisoner to speak about his past crimes despite a desire to remain silent. The fact that these consequences are imposed on prisoners, rather than ordinary citizens, moreover, is important in weighing respondent's constitutional claim.

3 The privilege against self-incrimination does not terminate at the jailhouse door, but the fact of a valid conviction and the ensuing restrictions on liberty are essential to the Fifth Amendment analysis. *Sandin v Conner,* 515 U.S. 472, 485, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995) ("[L]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system" (citation and internal quotation marks omitted)). A broad range of choices that might infringe constitutional rights in a free society fall within the expected conditions of confinement of those who have suffered a lawful conviction.

The Court has instructed that rehabilitation is a legitimate penological interest that must be weighed against the exercise of an inmate's liberty. See, *e.g., O'Lone v. Estate of Shabazz,* 482 U.S. 342, 348, 351, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987). Since "most offenders will eventually return to society, [a] paramount objective of the corrections system is the rehabilitation of those committed to its custody." *Pell v Procunier,* 417 U.S. 817, 823, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974). Acceptance of responsibility in turn demonstrates that an offender "is ready and willing to admit his crime and to enter the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period ***37*** of time than might otherwise be necessary." *Brady v United States,* 397 U.S. 742, 753, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970).

The limitation on prisoners' privileges and rights also follows from the need to grant necessary authority and capacity to federal and state officials to administer the prisons. See, *e.g , Turner v Safley,* 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987) "Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government " *Id ,* at 84-85, 107 S.Ct. 2254. To respect these imperatives, courts must exercise restraint in supervising the minutiae of prison life. *Ibid.* Where, as here, a state penal system is involved, federal courts have "additional reason to accord deference to the appropriate prison authorities." *Ibid.*

4 For these reasons, the Court in *Sandin* held that challenged prison conditions cannot give rise to a due process violation unless those conditions constitute "atypical and significant hardship[s] on [inmates] in relation to the ordinary incidents of prison life." See 515 U.S , at 484, 115 S Ct. 2293. The determination under *Sandin* whether a prisoner's liberty interest has been curtailed may not provide a precise parallel for determining whether there is compelled self-incrimination, but it does ***2027***provide useful instruction for answering the latter inquiry. *Sandin* and its counterparts underscore the axiom that a convicted felon's life in prison differs from that of an ordinary citizen. In the context of a legitimate rehabilitation program for prisoners, those same considerations are relevant to our analysis The compulsion inquiry must consider the significant restraints already inherent in prison life and the State's own vital interests in rehabilitation goals and procedures within the prison system. A prison clinical rehabilitation program, which is acknowledged to bear a rational relation to a legitimate penological objective, does not violate the privilege against self-incrimination if the adverse ***38*** consequences an inmate faces for not participating are related to the program objectives and do not constitute atypical and significant hardships in relation to the ordinary incidents of prison life

Along these lines, this Court has recognized that lawful conviction and incarceration necessarily place limitations on the exercise of a defendant's privilege against self-incrimination See, *e.g , Baxter v Palmigiano,* 425 U S. 308, 96 S.Ct. 1551, 47 L Ed.2d 810 (1976). *Baxter* declined to extend to prison disciplinary proceedings the rule of *Griffin v California,* 380 U.S. 609, 85 S.Ct. 1229, 14 L Ed.2d 106 (1965), that the prosecution may not comment on a defendant's silence at trial. 425 U.S., at 319-320, 96 S Ct. 1551. As the Court explained, "[d]isciplinary proceedings in state prisons .. involve the correctional process and important state interests other than conviction for crime." *Id.,* at 319, 96 S Ct. 1551 The inmate in *Baxter* no doubt felt compelled to speak in one sense of the word. The Court, considering the level of compulsion in light of the prison setting and the State's interests in rehabilitation and orderly administration, nevertheless rejected the inmate's self-incrimination claim.

5 In the present case, respondent's decision not to participate in the Kansas SATP did not extend his term of incarceration Nor did his decision affect his eligibility for good-time credits or parole. 224 F.3d, at 1182. Respondent instead complains that if he remains silent about his past crimes, he will be transferred from the medium-security unit-where the program is conducted-to a less desirable maximum-security unit.

No one contends, however, that the transfer is intended to punish prisoners for exercising their Fifth Amendment rights. Rather, the limitation on these rights is incidental to Kansas' legitimate penological reason for the transfer: Due to limited space, inmates who do not participate in their respective programs will be moved out of the facility where the programs are held to make room for other inmates. As the Secretary of Corrections has explained, "it makes no ***39*** sense to have someone who's not participating in a program taking up a bed in a setting where someone else who may be willing to participate in a program could occupy that bed and participate in a program." App. 99.

6 It is well settled that the decision where to house inmates is at the core of prison administrators' expertise. See *Meachum v. Fano,* 427 U.S. 215, 225, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976). For this reason the Court has not required administrators to conduct a hearing before transferring a prisoner to a bed in a different prison, even if "life in one prison is much more disagreeable than in another." *Ibid.* The Court has considered the proposition that a prisoner in a more comfortable facility might begin to feel entitled to remain there throughout his term of incarceration. The Court has concluded, nevertheless, that this expectation "is too ephemeral and insubstantial to trigger procedural due process protections as long as prison officials have discretion to transfer him for whatever reason or for no reason at all." *Id.,* at 228, 96 S.Ct. 2532.This logic has equal force in analyzing respondent's self-incrimination claim.

2028 7 Respondent also complains that he will be demoted from Level III to Level I status as a result of his decision not to participate. This demotion means the loss of his personal television, less access to prison organizations and the gym area; a reduction in certain pay opportunities and canteen privileges; and restricted visitation rights. App. 27-28. An essential tool of prison administration, however, is the authority to offer inmates various incentives to behave. The Constitution accords prison officials wide latitude to bestow or revoke these perquisites as they see fit. Accordingly, *Hewitt v Helms,* 459 U.S. 460, 467, n. 4, 103 S Ct. 864, 74 L.Ed.2d 675 (1983), held that an inmate's transfer to another facility did not in itself implicate a liberty interest, even though that transfer resulted in the loss of "access to vocational, educational, recreational, and rehabilitative programs." Respondent concedes that no liberty interest is implicated in this case. Tr. of Oral Arg. 45. To be sure, cases like *Meachum* and ***40*** *Hewitt* involved the Due Process Clause rather than theprivilege against compelled self-incrimination. Those cases neverthelessunderscore the axiom that, by virtue of their convictions, inmates must expect significant restrictions, inherent in prison life, on rights and privileges free citizens take for granted.

Respondent fails to cite a single case from this Court holding that the denial of discrete prison privileges for refusal to participate in a rehabilitation program amounts to unconstitutional compulsion. Instead,

relying on the so-called penalty cases, respondent treats the fact of his incarceration as if it were irrelevant. See, *e g , Garrity v New Jersey,* 385 U S 493, 87 S Ct. 616, 17 L.Ed 2d 562 (1967), *Spevack v Klein,* 385 U S 511, 87 S Ct. 625, 17 L.Ed.2d 574 (1967) Those cases, however, involved free citizens given the choice between invoking the Fifth Amendment privilege and sustaining their economic livelihood. See, *e g , id.,* at 516, 87 S Ct 625("[T]hreat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion") Those principles are not easily extended to the prison context, where inmates surrender upon incarceration their rights to pursue a livelihood and to contract freely with the State, as well as many other basic freedoms The persons who asserted rights in *Garrity* and *Spevack* had not been convicted of a crime It would come as a surprise if *Spevack*stands for the proposition that when a lawyer has been disbarred by reason of a final criminal conviction, the court or agency considering reinstatement of the right to practice law could not consider that the disbarred attorney has admitted his guilt and expressed contrition. Indeed, this consideration is often given dispositive weight by this Court itself on routine motions for reinstatement The current case is more complex, of course, in that respondent is also required to discuss other criminal acts for which he might still be liable for prosecution. On this point, however, there is still a critical distinction between the instant case and *Garrity* or *Spevack.* Unlike those cases, ***41** respondent here is asked to discuss other past crimes as part of a legitimate rehabilitative program conducted within prison walls.

To reject out of hand these considerations would be to ignore the State's interests in offering rehabilitation programs and providing for the efficient administration of its prisons. There is no indication that the SATP is an elaborate attempt to avoid the protections offered by the privilege against compelled self-incrimination. Rather, the program serves an important social purpose. It would be bitter medicine to treat as irrelevant the State's legitimate interests and to invalidate the SATP on the ground that it incidentally burdens an inmate's right to remain silent.

8 Determining what constitutes unconstitutional compulsion involves a question of judgment Courts must decide whether the consequences of an inmate's choice to remain silent are closer to the ***2029** physical torture against which the Constitution clearly protects or the *de minimis* harms against which it does not. The *Sandin*framework provides a reasonable means of assessing whether the response of prison administrators to correctional and rehabilitative necessities are so out of the ordinary that one could sensibly say they rise to the level of unconstitutional compulsion.

9 Prison context or not, respondent's choice is marked less by compulsion than by choices the Court has held give no rise to a self-incrimination claim. The "criminal process, like the rest of the legal system, is replete with situations requiring the making of difficult judgments as to which course to follow Although a defendant may have a right, even of constitutional dimensions, to follow whichever course he chooses, the Constitution does not by that token always forbid requiring him to choose " *McGautha v California,* 402 U.S 183, 213, 91 S.Ct 1454, 28 L.Ed.2d 711 (1971) (citation and internal quotation marks omitted). It is well settled that the government need not make the exercise of the Fifth Amendment privilege cost free See, *e g , *42 Jenkins v Anderson,* 447 U.S 231, 238, 100 S.Ct. 2124, 65 L Ed 2d 86 (1980) (a criminal defendant's exercise of his Fifth Amendment privilege prior to arrest may be used to impeach his credibility at trial), *Williams v Florida,* 399 U.S 78, 84-85, 90 S Ct 1893, 26 L.Ed 2d 446 (1970) (a criminal defendant may be compelled to disclose the substance of an alibi defense prior to trial or be barred from asserting it)

The cost to respondent of exercising his Fifth Amendment privilege-denial of certain perquisites that make his life in prison more tolerable-is much less than that borne by the defendant in *McGautha* There, the Court upheld a procedure that allowed statements, which were made by a criminal defendant to mitigate his responsibility and avoid the death penalty, to be used against him as evidence of his guilt. 402 U.S , at 217, 91 S.Ct. 1454. The Court likewise has held that plea bargaining does not violate

the Fifth Amendment, even though criminal defendants may feel considerable pressure to admit guilt in order to obtain more lenient treatment. See, *e.g., Bordenkircher v. Hayes,* 434 U.S. 357, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978); *Brady,*397 U.S., at 751, 90 S.Ct. 1463.

Nor does reducing an inmate's prison wage and taking away personal television and gym access pose the same hard choice faced by the defendants in *Baxter v. Palmigiano,* 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976), *Ohio Adult Parole Authority v. Woodard,* 523 U.S. 272, 118 S.Ct. 1244, 140 L.Ed.2d 387 (1998), and *Minnesota v. Murphy,* 465 U.S. 420, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984). In *Baxter,* a state prisoner objected to the fact that his silence at a prison disciplinary hearing would be held against him. The Court acknowledged that *Griffin v. California,* 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965), held that the Fifth Amendment prohibits courts from instructing a criminal jury that it may draw an inference of guilt from a defendant's failure to testify. The Court nevertheless refused to extend the *Griffin* rule to the context of state prison disciplinary hearings because those proceedings "involve the correctional process and important state interests other than conviction for crime." 425 U.S., at 319, 96 S.Ct. 1551. Whereas the inmate in the present case faces the loss of certain privileges, the prisoner in ***43** *Baxter*faced 30 days in punitive segregation as well as the subsequent downgrade of his prison classification status. *Id.,* at 313, 96 S.Ct. 1551.

In *Murphy,* the defendant feared the possibility of additional jail time as a result of his decision to remain silent. The defendant's probation officer knew the defendant had committed a rape and murder unrelated to his probation. One of the terms of the defendant's probation required him to be truthful with the probation officer in all matters. Seizing upon this, the officer interviewed the defendant ****2030*** about the rape and murder, and the defendant admitted his guilt. The Court found no Fifth Amendment violation, despite the defendant's fear of being returned to prison for 16 months if he remained silent. 465 U.S., at 422, 438, 104 S.Ct. 1136.

In *Woodard,* the plaintiff faced not loss of a personal television and gym access, but loss of life. In a unanimous opinion just four Terms ago, this Court held that a death row inmate could be made to choose between incriminating himself at his clemency interview and having adverse inferences drawn from his silence. The Court reasoned that it "is difficult to see how a voluntary interview could 'compel' respondent to speak. He merely faces a choice quite similar to the sorts of choices that a criminal defendant must make in the course of criminal proceedings, none of which has ever been held to violate the Fifth Amendment." 523 U.S., at 286, 118 S.Ct. 1244. As here, the inmate in *Woodard* claimed to face a Hobson's choice: He would damage his case for clemency no matter whether he spoke and incriminated himself, or remained silent and the clemency board construed that silence against him. Unlike here, the Court nevertheless concluded that the pressure the inmate felt to speak to improve his chances of clemency did not constitute unconstitutional compulsion. *Id.,* at 287-288, 118 S.Ct. 1244.

Woodard, Murphy, and *Baxter* illustrate that the consequences respondent faced here did not amount to unconstitutional compulsion. Respondent and the dissent attempt to distinguish *Baxter, Murphy,* and *Woodard* on the dual ***44** grounds that (1) the penalty here followed automatically from respondent's decision to remain silent, and (2) respondent's participation in the SATP was involuntary. Neither distinction would justify departing from this Court's precedents, and the second is question begging in any event.

It is proper to consider the nexus between remaining silent and the consequences that follow. Plea bargains are not deemed to be compelled in part because a defendant who pleads not guilty still must be convicted. Cf. *Brady, supra,* at 751-752, 90 S.Ct. 1463.States may award good-time credits and early parole for inmates who accept responsibility because silence in these circumstances does not automatically mean the parole board, which considers other factors as well, will deny them parole. See *Baxter, supra,* at 317-318, 96 S.Ct. 1551. While the automatic nature of the consequence may be a

necessary condition to finding unconstitutional compulsion, however, that is not a sufficient reason alone to ignore *Woodard, Murphy,* and *Baxter.* Even if a consequence follows directly from a person's silence, one cannot answer the question whether the person has been compelled to incriminate himself without first considering the severity of the consequences.

Nor can *Woodard* be distinguished on the alternative ground that respondent's choice to participate in the SATP was involuntary, whereas the death row inmate in *Woodard* chose to participate in clemency proceedings. This distinction assumes the answer to the compulsion inquiry. If respondent was not compelled to participate in the SATP, his participation was voluntary in the only sense necessary for our present inquiry. Kansas asks sex offenders to participate in SATP because, in light of the high rate of recidivism, it wants all, not just the few who volunteer, to receive treatment. Whether the inmates are being asked or ordered to participate depends entirely on the consequences of their decision not to do so. The parties in *Woodard, Murphy,* and *Baxter* all were faced with ramifications far worse than respondent faces here, and in each of those cases the Court ***45*** determined that their hard choice between silence and the consequences was not compelled. It is beyond doubt, of course, that respondent would prefer not to choose between losing prison privileges and accepting responsibility for his past crimes. It is a choice, nonetheless, that does not amount to compulsion, ****2031*** and therefore one Kansas may require respondent to make.

The Federal Government has filed an *amicus* brief describing its sex offender treatment program. Were respondent's position to prevail, the constitutionality of the federal program would be cast into serious doubt. The fact that the offender in the federal program can choose to participate without being given a new prisoner classification is not determinative. For, as the Government explains, its program is conducted at a single, 112-bed facility that is more desirable than other federal prisons. Tr. of Oral Arg. 22. Inmates choose at the outset whether to enter the federal program. Once accepted, however, inmates must continue to discuss and accept responsibility for their crimes if they wish to maintain the status quo and remain in their more comfortable accommodations. Otherwise they will be expelled from the program and sent to a less desirable facility. *Id.,* at 27. Thus the federal program is different from Kansas' SATP only in that it does not require inmates to sacrifice privileges besides housing as a consequence of nonparticipation. The federal program is comparable to the Kansas program because it does not offer participants use immunity and because it conditions a desirable housing assignment on inmates' willingness to accept responsibility for past behavior. Respondent's theory cannot be confined in any meaningful way, and state and federal courts applying that view would have no principled means to determine whether these similarities are sufficient to render the federal program unconstitutional.

Respondent is mistaken as well to concentrate on the so-called reward/penalty distinction and the illusory baseline ***46*** against which a change in prison conditions must be measured. The answer to the question whether the government is extending a benefit or taking away a privilege rests entirely in the eye of the beholder. For this reason, emphasis of any baseline, while superficially appealing, would be an inartful addition to an already confused area of jurisprudence. The prison warden in this case stated that it is largely a matter of chance where in a prison an inmate is assigned. App. 59-63. Even if Inmates A and B are serving the same sentence for the same crime, Inmate A could end up in a medium-security unit and Inmate B in a maximum-security unit based solely on administrative factors beyond their control. Under respondent's view, however, the Constitution allows the State to offer Inmate B the opportunity to live in the medium-security unit conditioned on his participation in the SATP, but does not allow the State to offer Inmate A the opportunity to live in that same medium-security unit subject to the same conditions. The consequences for Inmates A and B are identical: They may participate and live in medium security or refuse and live in maximum security. Respondent, however, would have us say the Constitution puts Inmate A in a superior position to Inmate B solely by the accident of the initial assignment to a medium-security unit.

This reasoning is unsatisfactory. The Court has noted before that "[w]e doubt that a principled distinction may be drawn between 'enhancing' the punishment imposed upon the petitioner and denying him the 'leniency' he claims would be appropriate if he had cooperated." *Roberts v. United States,* 445 U.S. 552, 557, n. 4, 100 S.Ct. 1358, 63 L.Ed.2d 622 (1980). Respondent's reasoning would provide States with perverse incentives to assign all inmates convicted of sex offenses to maximum security prisons until near the time of release, when the rehabilitation program starts. The rule would work to the detriment of the entire class of sex offenders who might not otherwise be placed in maximum-security facilities. And prison administrators ***47*** would be forced, before making routine prison housing decisions, to identify each inmate's so-called baseline and determine whether an adverse effect, however marginal, will result from the administrative ****2032*** decision. The easy alternatives that respondent predicts for prison administrators would turn out to be not so trouble free.

Respondent's analysis also would call into question the constitutionality of an accepted feature of federal criminal law: the downward adjustment for acceptance of criminal responsibility provided in § 3E1.1 of the United States Sentencing Commission Guidelines Manual (Nov.2002). If the Constitution does not permit the government to condition the use of a personal television on the acceptance of responsibility for past crimes, it is unclear how it could permit the government to reduce the length of a prisoner's term of incarceration based upon the same factor. By rejecting respondent's theory, we do not, in this case, call these policies into question.

* * *

Acceptance of responsibility is the beginning of rehabilitation. And a recognition that there are rewards for those who attempt to reform is a vital and necessary step toward completion. The Court of Appeals' ruling would defeat these objectives. If the State sought to comply with the ruling by allowing respondent to enter the program while still insisting on his innocence, there would be little incentive for other SATP participants to confess and accept counseling; indeed, there is support for Kansas' view that the dynamics of the group therapy would be impaired. If the State had to offer immunity, the practical effect would be that serial offenders who are incarcerated for but one violation would be given a windfall for past bad conduct, a result potentially destructive of any public or state support for the program and quite at odds with the dominant goal of acceptance of responsibility. If the State found it was forced to graduate prisoners from its rehabilitation program without knowing ***48*** what other offenses they may have committed, the integrity of its program would be very much in doubt. If the State found it had to comply by allowing respondent the same perquisites as those who accept counseling, the result would be a dramatic illustration that obduracy has the same rewards as acceptance, and so the program itself would become self-defeating, even hypocritical, in the eyes of those whom it seeks to help. The Fifth Amendment does not require the State to suffer these programmatic disruptions when it seeks to rehabilitate those who are incarcerated for valid, final convictions.

The Kansas SATP represents a sensible approach to reducing the serious danger that repeat sex offenders pose to many innocent persons, most often children. The State's interest in rehabilitation is undeniable. There is, furthermore, no indication that the SATP is merely an elaborate ruse to skirt the protections of the privilege against compelled self-incrimination. Rather, the program allows prison administrators to provide to those who need treatment the incentive to seek it.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings.

It is so ordered.

Justice O'CONNOR, concurring in the judgment.
The Court today is divided on the question of what standard to apply when evaluating compulsion for the purposes of the Fifth Amendment privilege against self-incrimination in a prison setting. I write

separately because, although I agree with Justice STEVENS that the Fifth Amendment compulsion standard is broader than the "atypical and significant hardship" standard we have adopted for evaluating due process claims in prisons, see *post,* at 2038-2039 (dissenting opinion) (citing *Meachum v Fano,* 427 U S 215, 96 S Ct. 2532, 49 L.Ed 2d 451 (1976)), I do not believe that the alterations in respondent's prison conditions as a result of his failure to participate in the Sexual ***49*** Abuse Treatment Program (SATP) were so great as to constitute compulsion for the purposes of ****2033*** the Fifth Amendment privilege against self-incrimination I therefore agree with the plurality that the decision below should be reversed.

The text of the Fifth Amendment does not prohibit all penalties levied in response to a person's refusal to incriminate himself or herself-it prohibits only the compulsion of such testimony. Not all pressure necessarily "compel [s]" incriminating statements.

For instance, in *Miranda v. Arizona,* 384 U.S. 436, 455, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), we found that an environment of police custodial interrogation was coercive enough to require prophylactic warnings only after observing that such an environment exerts a "heavy toll on individual liberty." But we have not required *Miranda* warnings during noncustodial police questioning. See, *e.g , Beckwith v. United States,* 425 U.S. 341, 96 S.Ct. 1612, 48 L.Ed.2d 1 (1976). In restricting *Miranda's* applicability, we have not denied that noncustodial questioning imposes some sort of pressure on suspects to confess to their crimes. See *Oregon v Mathiason,* 429 U.S. 492, 495, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977) *(per curiam)* ("Any interview of one suspected of a crime by a police officer will have coercive aspects to it .."); *Berkemer v McCarty,* 468 U.S. 420, 440, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984)(describing the "*comparatively* nonthreatening character of [noncustodial] detentions" (emphasis added)). Rather, as suggested by the text of the Fifth Amendment, we have asked whether the pressure imposed in such situations rises to a level where it is likely to "compe[l]" a person "to be a witness against himself."

The same analysis applies to penalties imposed upon a person as a result of the failure to incriminate himself-some penalties are so great as to "compe [l]" such testimony, while others do not rise to that level. Our precedents establish that certain types of penalties are capable of coercing incriminating testimony: termination of employment, *Uniformed Sanitation Men Ass'n, Inc v. Commissioner of Sanitation of City of New York,* 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089 (1968), the loss of a professional ***50*** license, *Spevack v Klein,* 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967), ineligibility to receive government contracts, *Lefkowitz v Turley,* 414 U.S. 70, 94 S.Ct. 316, 38 L.Ed.2d 274 (1973), and the loss of the right to participate in political associations and to hold public office, *Lefkowitz v Cunningham,* 431 U.S. 801, 97 S Ct. 2132, 53 L.Ed.2d 1 (1977). All of these penalties, however, are far more significant than those facing respondent here.

The first three of these so-called "penalty cases" involved the potential loss of one's livelihood, either through the loss of employment, loss of a professional license essential to employment, or loss of business through government contracts. In *Lefkowitz,* we held that the loss of government contracts was constitutionally equivalent to the loss of a profession because "[a government contractor] lives off his contracting fees just as surely as a state employee lives off his salary " 414 U S., at 83, 94 S.Ct. 316; contra, *post,* at 2043, n. 11. To support oneself in one's chosen profession is one of the most important abilities a person can have. A choice between incriminating oneself and being deprived of one's livelihood is the very sort of choice that is likely to compel someone to be a witness against himself The choice presented in the last case, *Cunningham,* implicated not only political influence and prestige, but also the First Amendment right to run for office and to participate in political associations. 431 U.S., at 807-808, 97 S.Ct. 2132. In holding that the penalties in that case constituted compulsion for Fifth Amendment purposes, we properly referred to those consequences as "grave " *Id ,* at 807, 97 S Ct. 2132.

I do not believe the consequences facing respondent in this case are serious enough to compel him to be a witness against **2034 himself. These consequences involve a reduction in incentive level, and a corresponding transfer from a medium-security to a maximum-security part of the prison. In practical terms, these changes involve restrictions on the personal property respondent can keep in his cell, a reduction in his visitation privileges, a reduction in the amount of money he can spend in the canteen, and a reduction in the *51 wage he can earn through prison employment. See *ante,* at 2023. These changes in living conditions seem to me minor Because the prison is responsible for caring for respondent's basic needs, his ability to support himself is not implicated by the reduction in wages he would suffer as a result. While his visitation is reduced as a result of his failure to incriminate himself, he still retains the ability to see his attorney, his family, and members of the clergy. App 27. The limitation on the possession of personal items, as well as the amount that respondent is allowed to spend at the canteen, may make his prison experience more unpleasant, but seems very unlikely to actually compel him to incriminate himself.

Justice STEVENS also suggests that the move to the maximum-security area of the prison would itself be coercive. See *post,* at 2041. Although the District Court found that moving respondent to a maximum-security section of the prison would put him "in a more dangerous environment occupied by more serious offenders," 24 F.Supp.2d 1152, 1155 (D.Kan 1998), there was no finding about how great a danger such a placement posed Because it is respondent's burden to prove compulsion, we may assume that the prison is capable of controlling its inmates so that respondent's personal safety is not jeopardized by being placed in the maximum-security area of the prison, at least in the absence of proof to the contrary. Justice STEVENS argues that the fact that the penalties facing respondent for refusal to incriminate himself are the same as those imposed for prison disciplinary violations also indicates that they are coercive. See *post,* at 2040. I do not agree. Insofar as Justice STEVENS' claim is that these sanctions carry a stigma that might compel respondent to incriminate himself, it is incorrect. Because the same sanctions are also imposed on all prisoners who refuse to participate in any recommended program, App 19-20, any stigma attached to the reduction would be minimal Insofar as *52 Justice STEVENS' claim is that these sanctions are designed to compel behavior because they are used as disciplinary tools, it is also flawed. There is a difference between the sorts of penalties that would give a prisoner a reason not to violate prison disciplinary rules and what would compel him to expose himself to criminal liability. Therefore, on this record, I cannot conclude that respondent has shown that his decision to incriminate himself would be compelled by the imposition of these penalties.

Although I do not think the penalties respondent faced were sufficiently serious to compel his testimony, I do not agree with the suggestion in the plurality opinion that these penalties could permissibly rise to the level of those in cases like *McGautha v. California,* 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971) (holding that statements made in the mitigation phase of a capital sentencing hearing may be used as evidence of guilt), *Bordenkircher v Hayes,* 434 U.S. 357, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978)(holding that plea bargaining does not violate the Fifth Amendment privilege against self-incrimination), and *Ohio Adult Parole Authority v Woodard,* 523 U.S. 272, 118 S.Ct. 1244, 140 L.Ed.2d 387 (1998) (holding that there is no right to silence at a clemency interview). See *ante,* at 2028-2030. The penalties potentially faced in these cases-longer incarceration and execution-are far greater than those we have already held to constitute unconstitutional compulsion in the penalty cases. Indeed, the imposition of such outcomes as a penalty **2035 for refusing to incriminate oneself would surely implicate a "liberty interest "

Justice STEVENS attempts to distinguish these cases because, in each, the negative outcome did not follow directly from the decision to remain silent, and because none of these cases involved a direct order to testify See *post,* at 2039. As the plurality's opinion makes clear, however, these two factors do not adequately explain the difference between these cases and the penalty cases, where we have found compulsion based on the imposition of penalties far less onerous See *ante,* at 2030-2031

*53 I believe the proper theory should recognize that it is generally acceptable to impose the risk of punishment, however great, so long as the actual imposition of such punishment is accomplished through a fair criminal process. See, *e.g.*, *McGautha v. California, supra,* at 213, 91 S.Ct. 1454 ("The criminal process, like the rest of the legal system, is replete with situations requiring the making of difficult judgments as to which course to follow. Although a defendant may have a right, even of constitutional dimensions, to follow whichever course he chooses, the Constitution does not by that token always forbid requiring him to choose" (citation and internal quotation marks omitted)). Forcing defendants to accept such consequences seems to me very different from imposing penalties for the refusal to incriminate oneself that go beyond the criminal process and appear, starkly, as government attempts to compel testimony; in the latter context, any penalty that is capable of compelling a person to be a witness against himself is illegitimate. But even this explanation of the privilege is incomplete, as it does not fully account for all of the Court's precedents in this area. Compare *Griffin v. California,* 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965) (holding that prosecutor may not comment on a defendant's failure to testify), with *Ohio Adult Parole Authority v. Woodard, supra* (holding that there is no right to silence at a clemency interview).

Complicating matters even further is the question of whether the denial of benefits and the imposition of burdens ought to be analyzed differently in this area. Compare *ante,* at 2031-2032, with *post,* at 2041. This question is particularly important given the existence of United States Sentencing Commission, Guidelines Manual § 3E1.1(Nov.2000), which can be read to offer convicted criminals the benefit of a lower sentence inexchange for accepting responsibility for their crimes. See *ante,* at 2032.

I find the plurality's failure to set forth a comprehensive theory of the Fifth Amendment privilege against self-incrimination troubling. But because this case indisputably *54 involves burdens rather than benefits, and because I do not believe the penalties assessed against respondent in response to his failure to incriminate himself are compulsive on any reasonable test, I need not resolve this dilemma to make my judgment in this case.

Although I do not agree that the standard for compulsion is the same as the due process standard we identified in *Sandin v. Conner,* 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), I join in the judgment reached by the plurality's opinion.

Justice STEVENS, with whom Justice SOUTER, Justice GINSBURG, and Justice BREYER join, dissenting.
No one could possibly disagree with the plurality's statement that "offering inmates minimal incentives to participate [in a rehabilitation program] does not amount to compelled self-incrimination prohibited by the Fifth Amendment." *Ante,* at 2022. The question that this case presents, however, is whether the State may punish an inmate's assertion of his Fifth Amendment privilege with the same mandatory sanction that follows a disciplinary conviction for an offense such as theft, sodomy, riot, **2036 arson, or assault. Until today the Court has never characterized a threatened harm as "a minimal incentive." Nor have we ever held that a person who has made a valid assertion of the privilege may nevertheless be ordered to incriminate himself and sanctioned for disobeying such an order. This is truly a watershed case.

Based on an ad hoc appraisal of the benefits of obtaining confessions from sex offenders, balanced against the cost of honoring a bedrock constitutional right, the plurality holds that it is permissible to punish the assertion of the privilege with what it views as modest sanctions, provided that those sanctions are not given a "punitive" label. As I shall explain, the sanctions are in fact severe, but even if that were not so, the plurality's policy judgment does not justify the evisceration of a constitutional right. Despite the plurality's *55 meandering attempt to justify its unprecedented departure from a rule of law that has been settled since the days of John Marshall, I respectfully dissent.

I

The text of the Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." It is well settled that the prohibition "not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also 'privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.' " *Minnesota v. Murphy,* 465 U.S. 420, 426, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984) (quoting *Lefkowitz v. Turley,* 414 U.S. 70, 77, 94 S.Ct. 316, 38 L.Ed.2d 274 (1973)). If a person is protected by the privilege, he may "refuse to answer unless and until he is protected at least against the use of his compelled answers and evidence derived therefrom in any subsequent criminal case in which he is a defendant." *Id.,* at 78, 94 S.Ct. 316 (citing *Kastigar v. United States,* 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972)). Prison inmates-including sex offenders-do not forfeit the privilege at the jailhouse gate. *Murphy,* 465 U.S., at 426, 104 S.Ct. 1136.

It is undisputed that respondent's statements on the admission of responsibility and sexual history forms could incriminate him in a future prosecution for perjury or any other offense to which he is forced to confess.[1] It is also ***56** clear that he invoked his Fifth Amendment right by refusing to participate in the SATP on the ground that he would be required to incriminate himself. Once he asserted that right, the State could have offered respondent immunity from the use of his statements in a subsequent prosecution. Instead, the Kansas Department of Corrections (Department) ordered respondent either to incriminate himself or to lose his medium-security status. In my opinion that order, coupled with the threatened revocation of respondent's Level III privileges, unquestionably violated his Fifth Amendment rights.

Putting to one side the plurality's evaluation of the policy judgments made by Kansas, its central submission is that the threatened withdrawal of respondent's Level III and medium-security status is not sufficiently harmful to qualify as unconstitutional ****2037** compulsion. In support of this position, neither the plurality nor JusticeO'CONNOR cites a single Fifth Amendment case in which a person invoked the privilege and was nevertheless required to answer a potentially incriminating question.[2]

The privilege against self-incrimination may have been born of the rack and the Star Chamber, see L. Levy, Origins of the Fifth Amendment 42 (I. Dee ed.1999); *Andresen v. Maryland,* 427 U.S. 463, 470, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976), but the Framers had a ***57** broader view of compulsion in mind when they drafted the Fifth Amendment.[3] We know, for example, that the privilege was thought to protect defendants from the moral compulsion associated with any statement made under oath.[4] In addition, the language of the Amendment, which focuses on a courtroom setting in which a defendant or a witness in a criminal trial invokes the privilege, encompasses the compulsion inherent in any judicial order overruling an assertion of the privilege. As Chief Justice Marshall observed in *United States v. Burr,* 25 F.Cas. 38, 40 (No. 14,692e) (CC Va. 1807): "If, in such a case, he say upon his oath that his answer would incriminate himself, the court can demand no other testimony of the fact."

Our holding in *Malloy v. Hogan,* 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964), that the privilege applies to the States through the Fourteenth Amendment, determined that the right to remain silent is itself a liberty interest protected by that Amendment. We explained that "[t]he Fourteenth Amendment secures against state invasion the same privilege that the Fifth Amendment guarantees against federal infringement-the right of a person to remain silent unless he chooses to speak *in the unfettered exercise of his own will, and to suffer no penalty* ... ***58** for such silence." *Id.,* at 8, 84 S.Ct. 1489 (emphasis added). Since *Malloy,* we have construed the text to prohibit not only direct orders to testify, but also indirect compulsion effected by comments on a defendant's refusal to take the stand, *Griffin v. California,* 380 U.S. 609, 613-614, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965), and we have recognized that compulsion can be presumed from the circumstances surrounding custodial interrogation, see *Dickerson v. United States,* 530 U.S. 428, 435, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000) ("[T]he coercion inherent in custodial

interrogation blurs the line between voluntary ***2038*** and involuntary statements, and thus heightens the risk that an individual will not be 'accorded his privilege under the Fifth Amendment not to be compelled to incriminate himself' ") (quoting *Miranda v Arizona,* 384 U S 436, 439, 86 S Ct 1602, 16 L Ed 2d 694 (1966)) Without requiring the deprivation of any other liberty interest, we have found prohibited compulsion in the threatened loss of the right to participate in political associations, *Lefkowitz v Cunningham,* 431 U S. 801, 97 S Ct 2132, 53 L.Ed.2d 1 (1977), forfeiture of government contracts, *Turley,*414 U.S , at 82, 94 S Ct. 316, loss of employment, *Uniformed Sanitation Men Ass'n, Inc v Commissioner of Sanitation of City of New York,* 392 U.S 280, 88 S Ct. 1917, 20 L.Ed.2d 1089 (1968), and disbarment, *Spevack v Klein,* 385 U S 511, 516, 87 S Ct. 625, 17 L Ed.2d 574 (1967) None of our opinions contains any suggestion that compulsion should have a different meaning in the prison context. Nor is there any support in our Fifth Amendment jurisprudence for the proposition that nothing short of losing one's livelihood is sufficient to constitute compulsion Accord, *Turley,* 414 U S , at 83, 94 S Ct 316

The plurality's suggestion that our decision in *Meachum v Fano,* 427 U S 215, 96 S.Ct. 2532, 49 L Ed.2d 451 (1976), supports a novel interpretation of the Fifth Amendment, see *ante,* at 2027, is inconsistent with the central rationale of that case In *Meachum,* a group of prison inmates urged the Court to hold that the Due Process Clause entitled them to a hearing prior to their transfer to a substantially less favorable facility. Relying on the groundbreaking decisions in *Morrissey v Brewer,*408 U.S. 471, 92 S.Ct. 2593, 33 L Ed.2d 484 (1972), and *Wolff v McDonnell,* 418 U.S. 539, 94 S.Ct 2963, 41 L.Ed.2d 935 (1974), ***59*** which had rejected the once-prevailing view that a prison inmate had no more rights than a "slave of the State,"[5] the prisoners sought to extend those holdings to require judicial review of "any substantial deprivation imposed by prison authorities " The Court recognized that after *Wolff* and its progeny, convicted felons retain "a variety of important rights that the courts must be alert to protect " Although *Meachum* refused to expand the constitutional rights of inmates, we did not narrow the protection of any established right Indeed, Justice White explicitly limited the holding to prison conditions that "do not otherwise violate the Constitution," 427 U.S , at 224, 96 S.Ct 2532 [6]

Not a word in our discussion of the privilege in *Ohio Adult Parole Authority v Woodard,* 523 U S. 272, 118 S.Ct. 1244, 140 L Ed.2d 387 (1998), *ante,* at 2030, requires a heightened showing of compulsion in the prison context to establish a Fifth Amendment violation That case is wholly unlike this one because Woodard was not ordered to incriminate himself and was not punished for refusing to do so He challenged Ohio's clemency procedures, arguing, *inter alia,* that an interview with members of the clemency board offered to inmates one week before their clemency hearing presented him with a Hobson's choice that violated the privilege against self-incrimination He could either take advantage of the interview and risk incriminating himself, or decline the interview, in which case the clemency board might draw adverse inferences from his decision not to testify We concluded that the prisoner who was offered "a voluntary interview" is in the same position as ***60*** any defendant ***2039*** faced with the option of either testifying or accepting the risk that adverse inferences may be drawn from his silence 523 U S., at 286, 118 S Ct. 1244

Respondent was directly ordered by prison authorities to participate in a program that requires incriminating disclosures, whereas no one ordered Woodard to do anything. Like a direct judicial order to answer questions in the courtroom, an order from the State to participate in the SATP is inherently coercive. Cf *Turley,* 414 U.S., at 82, 94 S.Ct 316 ("The waiver sought by the State, under threat of loss of contracts, would have been no less compelled than a direct request for the testimony without resort to the waiver") Moreover, the penalty for refusing to participate in the SATP is automatic Instead of conjecture and speculation about the indirect consequences that may flow from a decision to remain silent, we can be sure that defiance of a direct order carries with it the stigma of being a lawbreaker or a problem inmate, as well as other specified penalties The penalty involved in this case is a mandated official response to the assertion of the privilege

In *Baxter v Palmigiano,* 425 U S 308, 96 S Ct. 1551, 47 L Ed.2d 810 (1976), *ante,* at 2029, we held that a prison disciplinary proceeding did not violate the privilege, in part, because the State had not "insisted [nor] asked that Palmigiano waive his Fifth Amendment privilege," and it was "undisputed that an inmate's silence in and of itself [was] insufficient to support an adverse decision by the Disciplinary Board." 425 U.S., at 317-318, 96 S.Ct 1551 We distinguished the "penalty cases," *Garrity v. New Jersey,* 385 U S 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967), and *Turley,* not because they involved civilians as opposed to prisoners, as the plurality assumes, *ante,* at 2028, but because in those cases the "refusal to submit to interrogation and to waive the Fifth Amendment privilege, *standing alone and without regard to other evidence,* resulted in loss of employment or opportunity to contract with the State," whereas Palmigiano's silence "was given no more evidentiary value than was warranted ***61*** by the facts surrounding his case." 425 U.S., at 318, 96 S.Ct. 1551(emphasis added). And, in a subsequent "penalty" case, we distinguished *Baxter* on the ground that refusing to incriminate oneself "was only one of a number of factors to be considered by the finder of fact in assessing a penalty, and was given no more probative value than the facts of the case warranted," while in *Cunningham* "refusal to waive the Fifth Amendment privilege [led] automatically and without more to imposition of sanctions " 431 U S., at 808, n. 5, 97 S.Ct. 2132.

Similarly, in *Minnesota v Murphy,* 465 U.S , at 438, 439, 104 S.Ct. 1136, while "the State could not constitutionally carry out a threat to revoke probation for the legitimate exercise of the Fifth Amendment privilege," because revocation was not automatic under the Minnesota statute, we concluded that "Murphy could not reasonably have feared that the assertion of the privilege would have led to revocation."[7] These decisions recognized that there is an appreciable difference between an official ****2040*** sanction for disobeying a direct order and a mere risk of adverse consequences stemming from a voluntary choice The distinction is not a novel one, nor is it simply offered to "justify departing from this Court's precedents," *ante,* at 2030. Rather it is a distinction that we have drawn throughout our cases; therefore, it is the plurality's ***62*** disregard for both factors that represents an unjustified departure Unlike *Woodard, Murphy,* and *Baxter,* respondent cannot invoke his Fifth Amendment rights and then gamble on whether the Department will revoke his Level III status; the punishment is mandatory. The fact that this case involves a prison inmate, as did *Woodard* and *Baxter,* is not enough to render those decisions controlling authority. Since we have already said inmates do not forfeit their Fifth Amendment rights at the jailhouse gate, *Murphy,* 465 U S., at 426, 104 S.Ct. 1136, the plurality must point to something beyond respondent's status as a prisoner to justify its departure from our precedent

II

The plurality and Justice O'CONNOR hold that the consequences stemming from respondent's invocation of the privilege are not serious enough to constitute compulsion. The threat of transfer to Level I and a maximum-security unit is not sufficiently coercive in their view-either because the consequence is not really a penalty, just the loss of a benefit, or because it is a penalty, but an insignificant one I strongly disagree.

It took respondent several years to acquire the status that he occupied in 1994 when he was ordered to participate in the SATP. Because of the nature of his convictions, in 1983 the Department initially placed him in a maximum-security classification. Not until 1989 did the Department change his "security classification to 'medium by exception' because of his good behavior " *Lile v Simmons,* 23 Kan.App.2d 1, 2, 929 P 2d 171, 172 (1996). Thus, the sanction at issue threatens to deprive respondent of a status in the prison community that it took him six years to earn and which he had successfully maintained for five more years when he was ordered to incriminate himself. Moreover, abruptly "busting" his custody back to Level I, App 94, would impose the same stigma on him as would a disciplinary conviction for any of the most serious offenses described in petitioners' formal ***63*** statement of Internal Management Policy and Procedure (IMPP) As the District Court found, the sanctions imposed on respondent "mirror the

consequences imposed for serious disciplinary infractions." 24 F.Supp.2d 1152, 1155 (D.Kan.1998). This same loss of privileges is considered serious enough by prison authorities that it is used as punishment for theft, drug abuse, assault, and possession of dangerous contraband.[8]

The punitive consequences of the discipline include not only the dignitary and reputational harms flowing from the transfer, but a serious loss of tangible privileges as well. Because he refused to participate in the SATP, respondent's visitation rights will be restricted. He will be able to earn only $0.60 per day, as compared to Level III inmates, who can potentially earn minimum wage. His access to prison organizations and activities will ***2041** be limited. He will no longer be able to send his family more than $30 per pay period. He will be prohibited from spending more than $20 per payroll period at the canteen, rather than the $140 he could spend at Level III, and he will be restricted in what property he can keep in his cell. App. 27-28. In addition, because he will be transferred to a maximum-security unit, respondent will be forced to share a cell with three other ***64** inmates rather than one, and his movement outside the cell will be substantially curtailed. *Id.,* at 73, 83. The District Court found that the maximum-security unit is "a more dangerous environment occupied by more serious offenders." 24 F.Supp.2d, at 1155.[9] Perhaps most importantly, respondent will no longer be able to earn his way back up to Level III status through good behavior during the remainder of his sentence. App. 17 ("To complete Level I, an inmate must ... demonstrate a willingness to participate in recommended programs and/or work assignments for a full review cycle").

The plurality's glib attempt to characterize these consequences as a loss of potential benefits rather than a penalty is wholly unpersuasive. The threatened transfer to Level I and to a maximum-security unit represents a significant, adverse change from the status quo. Respondent achieved his medium-security status after six years of good behavior and maintained that status during five more years. During that time, an inmate unquestionably develops settled expectations regarding the conditions of his confinement. These conditions then form the baseline against which any change must be measured, and rescinding them now surely constitutes punishment.

Paying attention to the baseline is not just "superficially appealing," *ante,* at 2031. We have recognized that the government ***65** can extend a benefit in exchange for incriminating statements, see *Woodard,* 523 U.S., at 288, 118 S.Ct. 1244 ("[T]his pressure to speak in the hope of improving [one's] chance of being granted clemency does not make the interview compelled"), but cannot threaten to take away privileges as the cost of invoking Fifth Amendment rights, see, *e.g., Turley,* 414 U.S., at 82, 94 S.Ct. 316; *Spevack,* 385 U.S., at 516, 87 S.Ct. 625. Based on this distinction, nothing that I say in this dissent calls into question the constitutionality of *downward*adjustments for acceptance of responsibility under the United States Sentencing Guidelines, *ante,* at 2032. Although such a reduction in sentence creates a powerful incentive for defendants to confess, it completely avoids the constitutional issue that would be presented if the Guidelines operated like the scheme here and authorized an *upward* adjustment whenever a defendant refused to accept responsibility. Similarly, taking into account an attorney's acceptance of responsibility or contrition in deciding whether to reinstate his membership to the bar of this Court, see *ante,* at 2028, is obviously different from disbarring an attorney for invoking his privilege. By obscuring the distinction between penalties and incentives, it is the plurality that calls into question both the Guidelines and plea bargaining. See *Corbitt v. New Jersey,* 439 U.S. 212, 223-224, 99 S.Ct. 492, 58 L.Ed.2d 466 (1978) ("Nor does this record indicate that he was being punished for exercising a constitutional right ....[H]omicide defendants who are willing ***2042** to plead *non vult* may be treated more leniently than those who go to trial, but withholding the possibility of leniency from the latter cannot be equated with impermissible punishment as long as our cases sustaining plea bargaining remain undisturbed").[10]

***66** Even if the change in respondent's status could properly be characterized as a loss of benefits to which he had no entitlement, the question at hand is not whether the Department could have refused to extend those benefits in the first place, but rather whether revoking them at this point constitutes a penalty

for asserting the Fifth Amendment privilege. See *Perry v Sindermann,* 408 U.S. 593, 597, 92 S Ct. 2694, 33 L Ed.2d 570 (1972) The plurality contends that the transfer from medium to maximum security and the associated loss of Level III status is not intended to punish prisoners for asserting their Fifth Amendment rights, but rather is merely incidental to the prison's legitimate interest in making room for participants ***67*** in the program. *Ante,* at 2027. Of course, the Department could still house participants together without moving those who refuse to participate to more restrictive conditions of confinement and taking away their privileges. Moreover, petitioners have not alleged that respondent is taking up a bed in a unit devoted to the SATP; therefore, all the Department would have to do is allow respondent to stay in his current medium-security cell. If need be, the Department could always transfer respondent to another medium-security unit. Given the absence of evidence in the record that the Department has a shortage of medium-security beds, or even that there is a separate unit devoted to participants in the SATP, the only plausible explanation for the transfer to maximum security and loss of Level III status is that it serves as punishment for refusing to participate in the program

Justice O'CONNOR recognizes that the transfer is a penalty, but finds insufficient coercion because the "changes in [respondent's] living conditions seem to [her] minor." *Ante,* at 2034 (opinion concurring in judgment). The coerciveness of the penalty in this case must be measured not by ***2043*** comparing the quality of life in a prison environment with that in a free society, but rather by the contrast between the favored and disfavored classes of prisoners It is obviously impossible to measure precisely the significance of the difference between being housed in a four-person, maximum-security cell in the most dangerous area of the prison, on the one hand, and having a key to one's own room, the right to take a shower, and the ability to move freely within adjacent areas during certain hours, on the other-or to fully appreciate the importance of visitation privileges, being able to send more than $30 per pay period to family, having access to the yard for exercise, and the opportunity to participate in group activities What is perfectly clear, however, is that it is the aggregate effect of those penalties that creates compulsion. Nor is it coincidental that petitioners have selected this same ***68*** group of sanctions as the punishment to be imposed for the most serious violations of prison rules. Considering these consequences as a whole and comparing the Department's treatment of respondent to the rest of the prison population, it is perfectly clear that the penalty imposed is " constitutionally indistinguishable from the coercive provisions we struck down in *Gardner, Sanitation Men,* and *Turley* " *Cunningham,* 431 U S., at 807, 97 S Ct. 2132 [11]

III

The SATP clearly serves legitimate therapeutic purposes The goal of the program is to rehabilitate sex offenders, and the requirement that participants complete admission of responsibility and sexual history forms may well be an important component of that process Mental health professionals seem to agree that accepting responsibility for past sexual misconduct is often essential to successful treatment, and that treatment programs can reduce the risk of recidivism by sex offenders. See Winn, Strategic and Systematic Management of Denial in Cognitive/Behavioral Treatment of Sexual Offenders, 8 Sexual Abuse: J. Research and Treatment 25, 26-27 (1996).

The program's laudable goals, however, do not justify reduced constitutional protection for those ordered to participate. "We have already rejected the notion that citizens may be forced to incriminate themselves because it serves a governmental need." *Cunningham,* 431 U.S , at 808, 97 S.Ct. 2132. ***69*** The benefits of obtaining confessions from sex offenders may be substantial, but "claims of overriding interests are not unusual in Fifth Amendment litigation," and until today at least "they have not fared well." *Turley,* 414 U.S., at 78, 94 S.Ct. 316. The State's interests in law enforcement and rehabilitation are present in every criminal case If those interests were sufficient to justify impinging on prisoners' Fifth Amendment right, inmates would soon have no privilege left to invoke.

The plurality's willingness to sacrifice prisoners' Fifth Amendment rights is also unwarranted because available alternatives would allow the State to achieve the same objectives without impinging on inmates'

privilege *Turner v Safley,* 482 U S. 78, 93, 107 S Ct 2254, 96 L Ed.2d 64 (1987) The most obvious alternative is to grant participants use immunity See *Murphy,* 465 U S , at 436, n. 7, 104 S Ct 1136 ("[A] ***2044** State may validly insist on answers to even incriminating questions as long as it recognizes that the required answers may not be used in a criminal proceeding and thus eliminates the threat of incrimination"), *Baxter,* 425 U S , at 318, 96 S Ct. 1551 ("Had the State desired Palmigiano's testimony over his Fifth Amendment objection, we can but assume that it would have extended whatever use immunity is required by the Federal Constitution") Petitioners have not provided any evidence that the program's therapeutic aims could not be served equally well by granting use immunity Participants would still obtain all the therapeutic benefits of accepting responsibility and admitting past misconduct, they simply would not incriminate themselves in the process. At least one State already offers such protection, see Ky Rev Stat. Ann. § 197 440 (West 2001) ("Communications made in the application for or in the course of a sexual offender's diagnosis and treatment . . shall be privileged from disclosure in any civil or criminal proceeding"), and there is no indication that its choice is incompatible with rehabilitation. In fact, the program's rehabilitative goals would likely be furthered by ensuring free and open discussionwithout ***70** the threat of prosecution looming over participants' therapy sessions

The plurality contends that requiring immunity will undermine the therapeutic goals of the program because once "inmates know society will not punish them for their past offenses, they may be left with the false impression that society does not consider those crimes to be serious ones " *Ante,* at 2025 See also Brief for 18 States as *Amici Curiae* 11 ("By subjecting offenders to prosecution for newly revealed offenses, and by adhering to its chosen policy of mandatory reporting for cases of suspected child sexual abuse, Kansas reinforces the sensible notion that wrongdoing carries consequences") The idea that an inmate who is confined to prison for almost 20 years for an offense could be left with the impression that his crimes are not serious or that wrongdoing does not carry consequences is absurd. Moreover, the argument starts from a false premise Granting use immunity does not preclude prosecution, it merely prevents the State from using an inmate's own words, and the fruits thereof, against him in a subsequent prosecution. *New Jersey v Portash,* 440 U.S. 450, 457-458, 99 S.Ct. 1292, 59 L.Ed.2d 501 (1979). The plurality's concern might be justified if the State were required to grant *transactional* immunity, but we have made clear since *Kastigar* that use immunity is sufficient to alleviate a potential Fifth Amendment violation, 406 U.S., at 453, 92 S.Ct. 1653 Nor is a State *required* to grant use immunity in order to have a sex offender treatment program that involves admission of responsibility

Alternatively, the State could continue to pursue its rehabilitative goals without violating participants' Fifth Amendment rights by offering inmates a voluntary program The United States points out that an inmate's participation in the sexual offender treatment program operated by the Federal Bureau of Prisons is entirely voluntary "No loss of institutional privileges flows from an inmate's decision not to participate *71 in the program."[12] If an inmate chooses to participate in the federal program, he will be transferred from his "parent facility" to a "more desirable" prison, but if he refuses to participate in the first place, as respondent attempted to ***2045**do, he suffers no negative consequences Tr of Oral Arg 21-22 Although the inmates in the federal program are not granted use immunity, they are not compelled to participate. Indeed, there is reason to believe successful rehabilitation is more likely for voluntary participants than for those who are compelled to accept treatment See Abel, Mittelman, Becker, Rathner, & Rouleau, Predicting Child Molesters' Response to Treatment, 528 Annals N Y Acad of Sciences 223 (1988) (finding that greater perceived pressure to participate in treatment is strongly correlated with the dropout rate)

Through its treatment program, Kansas seeks to achieve the admirable goal of reducing recidivism among sex offenders In the process, however, the State demands an impermissible and unwarranted sacrifice from the participants No matter what the goal, inmates should not be compelled to forfeit the privilege against self-incrimination simply because the ends are legitimate or because they have been convicted of sex offenses Particularly in a case like this one, in which respondent has protested his innocence all along

and is being compelled to confess to a crime that he still insists he did not commit, we ought to ask ourselves-what if this is one of those rare cases in which the jury made a *72 mistake and he is actually innocent? And in answering that question, we should consider that even members of the Star Chamber thought they were pursuing righteous ends.

I respectfully dissent.

Footnotes

*The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 As a participant in the Sexual Abuse Treatment Program (SATP), respondent would be required to sign an "Admission of Responsibility" form setting forth the details of the offense for which he was convicted. Because he had testified at trial that his sexual intercourse with the victim before driving her back to her car was consensual, the District Court found that a written admission on this form would subject respondent to a possible charge of perjury. 24 F.Supp.2d 1152, 1157 (D.Kan.1998). In addition, the SATP requires participants to "generate a written sexual history which includes all prior sexual activities, regardless of whether such activities constitute uncharged criminal offenses." *Id.*, at 1155. The District Court found that the form "clearly seeks information that could incriminate the prisoner and subject him to further criminal charges." *Id.*, at 1157.

2 Petitioners relied on two cases, *Fisher v. United States*, 425 U.S. 391, 96 S.Ct. 1569, 48 L.Ed.2d 39 (1976), and *United States v. Washington*, 431 U.S. 181, 187-188, 97 S.Ct. 1814, 52 L.Ed.2d 238 (1977). In *Fisher*, we held that the privilege does not permit the target of a criminal investigation to prevent his lawyer from answering a subpoena to produce incriminating documents. We reached that conclusion because the person asserting the privilege was not the one being compelled. In *Washington*, cited *ante*, at 2026, a grand jury witness voluntarily answered questions after being advised of the privilege, though not of the fact that he was a potential defendant in danger of being indicted. In neither case did the witness assert the privilege against incriminating himself.

3 The origins and evolution of the privilege have received significant scholarly attention and debate in recent years. See, *e.g.*, Hazlett, Nineteenth Century Origins of the Fifth Amendment Privilege Against Self-Incrimination, 42 Am. J. Legal Hist. 235 (1998); Amar & Lettow, Fifth Amendment First Principles: The Self-Incrimination Clause, 93 Mich. L.Rev. 857 (1995). The historical account is complicated by the fact that before *Boyd v. United States*, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746 (1886), the privilege was treated as a common-law evidentiary doctrine separate from the Fifth Amendment. During that time, the privilege was also subsumed within general discussions of the voluntariness of confessions.

4 Alschuler, A Peculiar Privilege in Historical Perspective, in The Privilege Against Self-Incrimination 181, 192-193 (R. Helmholz et al. eds.1997) (discussing historical sources which indicate that the "privilege prohibited (1) incriminating interrogation under oath, (2) torture, and (3) probably other forms of coercive interrogation such as threats of future punishment and promises of leniency" (footnotes omitted)).

5 See *Meachum v. Fano*, 427 U.S. 215, 231, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976) (STEVENS, J., dissenting).

6 In his opinion for the Court in the companion case, *Montanye v. Haymes*, 427 U.S. 236, 242, 96 S.Ct. 2543, 49 L.Ed.2d 466 (1976), Justice White reiterated this point: "As long as the conditions or degree of confinement to which the prisoner is subjected are within the sentence imposed upon him and [are] not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight."

7 The plurality is quite wrong to rely on *Murphy* for the proposition that an individual is not compelled to incriminate himself when faced with the threat of return to prison. *Ante*, at 2029-2030. In *Murphy*, we did not have occasion to decide whether such a threat constituted compulsion because we held that "since

Murphy revealed incriminating information instead of timely asserting his Fifth Amendment privilege, his disclosures were not compelled incriminations." 465 U.S., at 440, 104 S.Ct. 1136. As we explained, "a witness confronted with questions that the government should reasonably expect to elicit incriminating evidence ordinarily must assert the privilege rather than answer if he desires not to incriminate himself.... But if he chooses to answer, his choice is considered to be voluntary since he was free to claim the privilege and would suffer no penalty as the result of his decision to do so." *Id.,* at 429, 104 S.Ct. 1136. In contrast to Murphy, respondent has consistently asserted his Fifth Amendment privilege.

8 IMPP 11-101 provides that an inmate "shall be automatically reduced to Level I for any of the following: (1) Termination from a work or program assignment for cause; (2) Refusal to participate in recommended programs at the time of placement; (3) Offenses committed in which a felony charge is filed with the district or county prosecutor; (4) Disciplinary convictions for: (a) Theft; (b) Being in a condition of drunkenness, intoxication, or a state of altered consciousness; (c) Use of stimulants, sedatives, unauthorized drugs, or narcotics, or the misuse, or hoarding of authorized or prescribed medication; (d) Sodomy, aggravated sodomy, or aggravated sexual act; (e) Riot or incitement to riot; (f) Arson; (g) Assault; (h) Battery; (i) Inmate Activity (limitations); (j) Sexual Activity; (k) Interference with Restraints; (*l*) Relationships with Staff; (m) Work Performance; or (n) Dangerous Contraband." App. 19-20 (citations omitted).

9 Respondent attested to the fact that in his experience maximum security "is a very hostile, intimidating environment because most of the inmates in maximum tend to have longer sentences and are convicted of more serious crimes, and, as a consequence, care less how they act or treat others." *Id.,* at 41-42. He explained that in the maximum-security unit "there is far more gang activity," "reported and unreported rapes and assaults of inmates are far more prevalent," and "sex offenders ... are seen as targets for rape and physical and mental assault[s]," whereas in medium security, "because the inmates want to maintain their medium security status, they are less prone to breaking prison rules or acting violently." *Id.,* at 42-43.

10 The plurality quotes a footnote in *Roberts v. United States,* 445 U.S. 552, 100 S.Ct. 1358, 63 L.Ed.2d 622 (1980), for the proposition that a principled distinction cannot be drawn between enhancing punishment and denying leniency, *ante,* at 2031. This quote is misleading because, as in *Minnesota v. Murphy,* 465 U.S. 420, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984), see n. 7, *supra,* Roberts failed to assert his privilege against self-incrimination, and we reiterated that the privilege is not self-executing, 445 U.S., at 559, 100 S.Ct. 1358. Furthermore, the passage quoted by the plurality, *id.,* at 557, n. 4, 100 S.Ct. 1358, was in reference to Roberts' claim that the sentencing judge could not consider his refusal to incriminate *a co-conspirator* in deciding whether to impose his sentences consecutively. In that context, the privilege is not implicated and compulsion is not constitutionally significant. While it is true that in some cases the line between enhancing punishment and refusing leniency may be difficult to draw, that does not mean the distinction is irrelevant for Fifth Amendment purposes.

It is curious that the plurality asserts the impracticality of drawing such a distinction, given that in this case a majority of the Court agrees that it is perfectly clear the consequences facing respondent represent a burden, rather than the denial of a benefit. *Ante,* at 2035 (O'CONNOR, J., concurring in judgment). Our cases reveal that it is not only possible, but necessary to draw the distinction. For even *Bordenkircher v. Hayes,* 434 U.S. 357, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978), conditioned its entire analysis of plea bargaining on the assumption that the defendant had been charged with the greater offense prior to plea bargaining and, therefore, faced the denial of leniency rather than an enhanced penalty. *Id.,* at 360-361, 98 S.Ct. 663("While the prosecutor did not actually obtain the recidivist indictment until after the plea conferences had ended, his intention to do so was clearly expressed at the outset of plea negotiations. ... This is not a situation, therefore, where the prosecutor without notice brought an additional and more serious charge after plea negotiations relating only to the original indictment had ended with the defendant's insistence on pleading not guilty. As a practical matter, in short, this case would be no different if the grand jury had indicted [the defendant] as a recidivist from the outset, and the prosecutor had offered to drop that charge as part of the plea bargain").

11 Justice O'CONNOR would distinguish these cases because the penalty involved the loss of one's livelihood, whereas here respondent will be housed, clothed, and fed regardless of whether he is in maximum or medium security. We rejected a similar argument in *Turley,* when we refused to distinguish *Gardner v. Broderick,* 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed.2d 1082 (1968), and *Uniformed Sanitation Men Ass'n, Inc. v. Commissioner of Sanitation of City of New York,* 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089 (1968), based on the difference between losing one's job and losing the ability to obtain government contracts. 414 U.S., at 83, 94 S.Ct. 316. We concluded that there was no "difference of constitutional magnitude between the threat of job loss to an employee of the State, and a threat of loss of contracts to a contractor." *Ibid.*

12 Brief for United States as *Amicus Curiae* 27. Because of this material difference between the Kansas and federal programs, recognizing the compulsion in this case would not cast any doubt on the validity of voluntary programs. The plurality asserts that "the federal program is different from Kansas' SATP only in that it does not require inmates to sacrifice privileges *besides housing* as a consequence of nonparticipation." *Ante,* at 2031 (emphasis added). This statement is inaccurate because, as the quote in the text reveals, *no* loss of privileges follows from the decision not to participate in the federal program.

123 S.Ct. 1140
Supreme Court of the United States

Delbert W. SMITH and Bruce M. Botelho, Petitioners,

v.

John DOE I, et al.

No. 01–729.

Argued Nov. 13, 2002.Decided March 5, 2003. Rehearing Denied April 28, 2003. See 538 U.S. 1009, 123 S.Ct. 1925.

Synopsis

Convicted sex offenders, and wife of one of offenders, brought § 1983 action challenging constitutionality of Alaska Sex Offender Registration Act (SORA) as a violation of the ex post facto clause Following reversal of determination that plaintiffs would not be allowed to proceed under pseudonyms, 884 F Supp. 1372, parties cross-moved for summary judgment. The United States District Court for the District of Alaska, H. Russell Holland, J , granted summary judgment to state Plaintiffs appealed. The Court of Appeals, 259 F 3d 979, reversed and remanded On grant of certiorari, the Supreme Court, Justice Kennedy, held that the Act was nonpunitive and therefore its retroactive application did not violate the ex post facto clause.

Reversed and remanded
Justice Thomas filed a concurring opinion
Justice Souter filed an opinion concurring in the judgment
Justice Stevens filed a dissenting opinion.
Justice Ginsburg filed a dissenting opinion in which Justice Breyer joined

West Headnotes (10)

1 Constitutional Law Penal laws in general
Constitutional Law Punishment in general
In considering whether a law constitutes retroactive punishment forbidden by the Ex Post Facto Clause, a court must ascertain whether the legislature meant the statute to establish civil proceedings, if the intention of the legislature was to impose punishment, that ends the inquiry, but if the intention was to enact a regulatory scheme that is civil and nonpunitive, the court must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate the State's intention to deem it civil U.S.C A Const. Art. 1, § 10, cl 1.
458 Cases that cite this headnote

2 Constitutional Law Punishment in general
For purpose of determining whether a law constitutes retroactive punishment forbidden by the Ex Post Facto Clause, only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty. U S C A Const Art 1, § 10, cl 1
251 Cases that cite this headnote

3 Action Civil or criminal
Whether a statutory scheme is civil or criminal is first of all a question of statutory construction, a court considers the statute's text and its structure to determine the legislative objective
26 Cases that cite this headnote

4 Mental Health Registration and Community Notification
An imposition of restrictive measures on sex offenders adjudged to be dangerous was a legitimate nonpunitive governmental objective of state's Sex Offender Registration Act (SORA), even if that objective was consistent with the purposes of the state's criminal justice system AS 12 63 010 et seq
128 Cases that cite this headnote

5 **Action** Civil or criminal
Formal attributes of a legislative enactment, such as the manner of its codification or the enforcement procedures it establishes, are probative, but not dispositive, of the legislature's intent as to whether a statute is civil or criminal.
8 Cases that cite this headnote
6 **Constitutional Law** Registration
Mental Health Sex offenders
For purpose of ex post facto analysis, intent of Alaska Legislature in adopting Sex Offender Registration Act (SORA) was to create a civil, nonpunitive regime; although the Act's registration provisions were codified in state's criminal code, some of the Act's provisions related to criminal administration, and the state's criminal pleading rule required informing a defendant of the Act's requirements, the Act's stated objective of protecting the public from sex offenders was nonpunitive, the Act contained many provisions not involving criminal punishment, parts of the Act were codified in civil provisions, and the Act mandated no procedures other than duty to register, and instead vested authority to promulgate implementing regulations with administrative agency. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 12.63.010 et seq.; Alaska Rules Crim.Proc., Rule 11(c)(4).
253 Cases that cite this headnote
7 **Constitutional Law** Constitutional Prohibitions in General
Constitutional Law Punishment in general
In analyzing the effects of a law for purpose of ex post facto analysis, relevant factors include whether, in its necessary operation, the regulatory scheme has been regarded in our history and traditions as a punishment whether it imposes an affirmative disability or restraint, whether it promotes the traditional aims of punishment, and whether it has a rational connection to a nonpunitive purpose, or is excessive with respect to this purpose. U.S.C.A. Const. Art. 1, § 10, cl. 1.
217 Cases that cite this headnote
8 **Constitutional Law** Registration
Mental Health Sex offenders
Effects of Alaska's Sex Offender Registration Act (SORA) were nonpunitive, and thus, retroactive application of the Act, whose purpose was also nonpunitive, did not violate the ex post facto clause; any stigma was not integral part of Act's objective, Act imposed no physical restraint, there was no evidence of substantial occupational or housing disadvantages for registrants that would not otherwise have occurred, periodic updates were not required to be made in person, Act's purpose was not retributive, Act had legitimate nonpunitive purpose of public safety, which was reasonably advanced by alerting public, duration of reporting duty was not excessive, and notification system was passive. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 12.63.010 et seq.
291 Cases that cite this headnote
9 **Constitutional Law** Power to enact
The Ex Post Facto Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences. U.S.C.A. Const. Art. 1, § 10, cl. 1.
49 Cases that cite this headnote
10 **Constitutional Law** Registration
Mental Health Sex offenders
Alaska's determination to legislate with respect to convicted sex offenders as a class in state's Sex Offender Registration Act (SORA), rather than require individual determination of their dangerousness, did not make the statute a punishment under the Ex Post Facto Clause. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 12.63.010 et seq.
732 Cases that cite this headnote

***1142 Syllabus**

Under the Alaska Sex Offender Registration Act (Act), any sex offender or child kidnaper incarcerated in the State must register with the Department of Corrections within 30 days before his release, providing his name, address, and other specified information. If the individual is at liberty, he must register with local law enforcement authorities within a working day of his conviction or of entering the State. If he was convicted of a single, nonaggravated sex crime, the offender must provide annual verification of the submitted information for 15 years. If he was convicted of an aggravated sex offense or of two or more sex offenses, he must register for life and verify the information quarterly. The offender's information is forwarded to the Department of Public Safety, which maintains a central registry of sex offenders. Some of the data, such as fingerprints, driver's license number, anticipated change of address, and whether the offender has had medical treatment afterwards, are kept confidential. The offender's name, aliases, address, photograph, physical description, description, license and identification numbers of motor vehicles, place of employment, date of birth, crime, date and place of conviction, length and conditions of sentence, and a statement as to whether the offender is in compliance with the Act's update requirements or cannot be located are, however, published on the Internet. Both the Act's registration and notification requirements are retroactive.

Respondents were convicted of aggravated sex offenses. Both were released from prison and completed rehabilitative programs for sex offenders. Although convicted before the Act's passage, respondents are covered by it. After the initial registration, they are required to submit quarterly verifications and notify the authorities of any changes. Both respondents, along with the wife of one of them, also a respondent here, brought this action under 42 U.S.C. § 1983, seeking to declare the Act void as to them under, *inter alia,* the *Ex Post Facto* Clause, U.S. Const., Art. I, § 10, cl. 1. The District Court granted petitioners summary judgment. The Ninth Circuit disagreed in relevant part, holding that, because its effects were punitive, the Act violates the *Ex Post Facto* Clause.

**85 Held:* Because the Alaska Sex Offender Registration Act is nonpunitive, its retroactive application does not violate the *Ex Post Facto* Clause. Pp. 1146–1154.

(a) The determinative question is whether the legislature meant to establish "civil proceedings." *Kansas v. Hendricks,* 521 U.S. 346, 361, 117 S.Ct. 2072, 138 L.Ed.2d 501. If the intention was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, the Court must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate ***1143* the State's intention to deem it civil. *E.g., ibid.* Because the Court ordinarily defers to the legislature's stated intent, *ibid.,* only the clearest proof will suffice to override that intent and transform what has been denominated a civil remedy into a criminal penalty. See, *e.g., ibid.* Pp. 1146–1147.

(b) The Alaska Legislature's intent was to create a civil, nonpunitive regime. The Court first considers the statute's text and structure, *Flemming v. Nestor,* 363 U.S. 603, 617, 80 S.Ct. 1367, 4 L.Ed.2d 1435, asking whether the legislature indicated either expressly or impliedly a preference for one label or the other, *Hudson v. United States,* 522 U.S. 93, 99, 118 S.Ct. 488, 139 L.Ed.2d 450. Here, the statutory text states the legislature's finding that sex offenders pose a high risk of reoffending, identifies protecting the public from sex offenders as the law's primary interest, and declares that release of certain information about sex offenders to public agencies and the public will assist in protecting the public safety. This Court has already determined that an imposition of restrictive measures on sex offenders adjudged to be dangerous is a legitimate nonpunitive governmental objective. *Hendricks,* 521 U.S., at 363, 117 S.Ct. 2072. Here, as in *Hendricks,* nothing on the statute's face suggests that the legislature sought to create anything other than a civil scheme designed to protect the public from harm. *Id.,* at 361, 117 S.Ct. 2072. The contrary conclusion is not required by the Alaska Constitution's inclusion of the need to protect the public as one of the purposes of criminal administration. Where a legislative restriction is an incident

of the State's power to protect the public health and safety, it will be considered as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment. *E.g., Flemming v. Nestor, supra,* at 616, 80 S.Ct. 1367, 4 L.Ed.2d 1435.Other formal attributes of a legislative enactment, such as the manner of its codification or the enforcement procedures it establishes, are probative of the legislature's intent, see, *e.g., Hendricks,* 521 U.S., at 361, 117 S.Ct. 2072, but are open to debate in this case. The Act's notification provisions are codified in the State's Health, Safety, and Housing Code, confirming the conclusion that the statute was intended as a nonpunitive regulatory measure. Cf., *ibid.* The fact that the Act's registration provisions are codified in the State's Code of Criminal Procedure is not ***86** dispositive, since a statute's location and labels do not by themselves transform a civil remedy into a criminal one. See *United States v. One Assortment of 89 Firearms,*465 U.S. 354, 364–365, and n. 6, 104 S.Ct. 1099, 79 L.Ed.2d 361. The Code of Criminal Procedure contains many other provisions that do not involve criminal punishment. The Court's conclusion is not altered by the fact that the Act's implementing procedural mechanisms require the trial court to inform the defendant of the Act's requirements and, if possible, the period of registration required. That conclusion is strengthened by the fact that, aside from the duty to register, the statute itself mandates no procedures. Instead, it vests the authority to promulgate implementing regulations with the Department of Public Safety, an agency charged with enforcing both criminal *and* civil regulatory laws. Also telling is the fact that the Act does not require the procedures adopted to contain any safeguards associated with the criminal process. By contemplating distinctly civil procedures, the legislature indicated clearly that it intended a civil, not a criminal, sanction. *United States v. Ursery,* 518 U.S. 267, 289, 116 S.Ct. 2135, 135 L.Ed.2d 549. Pp. 1147–1149.

(c) Respondents cannot show, much less by the clearest proof, that the Act's effects negate Alaska's intention to establish a civil regulatory scheme. In analyzing the effects, the Court refers to the seven factors noted in *Kennedy v. Mendoza–Martinez,*372 U.S. 144, 168–169, 83 S.Ct. 554, 9 L.Ed.2d 644, as a useful ***1144** framework. First, the regulatory scheme, in its necessary operation, has not been regarded in the Nation's history and traditions as a punishment. The fact that sex offender registration and notification statutes are of fairly recent origin suggests that the Act was not meant as a punitive measure, or, at least, that it did not involve a traditional means of punishing. Respondents' argument that the Act, particularly its notification provisions, resembles shaming punishments of the colonial period is unpersuasive. In contrast to those punishments, the Act's stigma results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public. The fact that Alaska posts offender information on the Internet does not alter this conclusion. Second, the Act does not subject respondents to an affirmative disability or restraint. It imposes no physical restraint, and so does not resemble imprisonment, the paradigmatic affirmative disability or restraint. *Hudson,* 522 U.S., at 104, 118 S.Ct. 488. Moreover, its obligations are less harsh than the sanctions of occupational debarment, which the Court has held to be nonpunitive. See, *e.g., ibid.* Contrary to the Ninth Circuit's assertion, the record contains no evidence that the Act has led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred. Also unavailing is that court's assertion that the periodic update requirement imposed an affirmative disability. The ***87** Act, on its face, does not require these updates to be made in person. The holding that the registration system is parallel to probation or supervised release is rejected because, in contrast to probationers and supervised releasees, offenders subject to the Act are free to move where they wish and to live and work as other citizens, with no supervision. While registrants must inform the authorities after they change their facial features, borrow a car, or seek psychiatric treatment, they are not required to seek permission to do so.Third, the Act does not promote the traditional aims of punishment. That it might deter future crimes is not dispositive. See, *e.g., id.,* at 105, 118 S.Ct. 488. Moreover, the Ninth Circuit erred in concluding that the Act's registration obligations were retributive. While the Act does differentiate between individuals convicted of aggravated or multiple offenses and those convicted of a single nonaggravated offense, these broad categories and the reporting requirement's corresponding length are reasonably related to the danger of recidivism, and this is consistent with the regulatory

objective. Fourth, the Act has a rational connection to a legitimate nonpunitive purpose, public safety, which is advanced by alerting the public to the risk of sex offenders in their community. That the Act may not be narrowly drawn to accomplish the stated purpose is not dispositive, since such imprecision does not suggest that the Act's nonpunitive purpose is a "sham or mere pretext." *Hendricks, supra,* at 371, 117 S.Ct. 2072 (KENNEDY, J., concurring). Fifth, the regulatory scheme is not excessive with respect to the Act's purpose. The State's determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not render the Act punitive. See, *e.g., Hawker v. New York,* 170 U.S. 189, 197, 18 S.Ct. 573, 42 L.Ed. 1002.*Hendricks, supra,* at 357–368, 364, 117 S.Ct. 2072, distinguished. Moreover, the wide dissemination of offender information does not render the Act excessive, given the general mobility of the population. The question here is not whether the legislature has made the best choice possible to address the problem it seeks to remedy, but whether the regulatory means chosen are reasonable in light of the nonpunitive objective. The Act meets this standard. Finally, the two remaining *Mendoza–Martinez* factors—whether the regulation comes into play only on a finding of scienter and whether the behavior to which it applies is already ***1145** a crime—are of little weight in this case. Pp. 1149–1154.

259 F.3d 979, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and O'CONNOR, SCALIA, and THOMAS, JJ., joined. THOMAS, J., filed a concurring opinion, *post,* p. 1154. SOUTER, J., filed an opinion concurring in the judgment, *post,*p. 1154. STEVENS, J., filed a dissenting opinion, ***88** *post,* p. 1156. GINSBURG, J., filed a dissenting opinion, in which BREYER, J., joined, *post,* p. 1159.

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Opinion

***89** Justice KENNEDY delivered the opinion of the Court.

The Alaska Sex Offender Registration Act requires convicted sex offenders to register with law enforcement authorities, and much of the information is made public. We must decide whether the registration requirement is a retroactive punishment prohibited by the *Ex Post Facto* Clause.

I

A

The State of Alaska enacted the Alaska Sex Offender Registration Act (Act) on May 12, 1994. 1994 Alaska Sess. Laws ch. 41. Like its counterparts in other States, the Act is termed a "Megan's Law." Megan Kanka was a 7–year–old New Jersey girl who was sexually assaulted and murdered in 1994 by a

neighbor who, unknown to the victim's family, had prior convictions for sex offenses against children. The crime gave impetus to laws for mandatory registration of sex offenders and corresponding community notification. In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, title 17, 108 Stat.2038, as amended, 42 U.S.C. § 14071, which conditions certain federal law enforcement funding on the States' adoption of sex offender registration laws and sets ***90** minimum standards for state programs. By 1996, every State, the District of Columbia, and the Federal Government had enacted some variation of Megan's Law.

The Alaska law, which is our concern in this case, contains two components: a registration requirement and a notification system. Both are retroactive. 1994 Alaska Sess. Laws ch. 41, § 12(a). The Act requires any "sex offender or child kidnapper who is physically present in the state" to register, either with the Department of Corrections (if the individual is incarcerated) or with the local law enforcement authorities (if the individual is at liberty). Alaska Stat. §§ 12.63.010(a), (b) (2000). Prompt registration is mandated. If still in prison, a covered sex offender must register within 30 days before release; otherwise he must do so within a working day of his conviction or of entering the State. § 12.63.010(a). The sex offender must provide his name, aliases, identifying ***1146** features, address, place of employment, date of birth, conviction information, driver's license number, information about vehicles to which he has access, and postconviction treatment history. § 12.63.010(b)(1). He must permit the authorities to photograph and fingerprint him. § 12.63.010(b)(2).

If the offender was convicted of a single, nonaggravated sex crime, he must provide annual verification of the submitted information for 15 years. §§ 12.63.010(d)(1), 12.63.020(a)(2). If he was convicted of an aggravated sex offense or of two or more sex offenses, he must register for life and verify the information quarterly. §§ 12.63.010(d)(2), 12.63.020(a)(1). The offender must notify his local police department if he moves. § 12.63.010(c). A sex offender who knowingly fails to comply with the Act is subject to criminal prosecution. §§ 11.56.835, 11.56.840.

The information is forwarded to the Alaska Department of Public Safety, which maintains a central registry of sex offenders. § 18.65.087(a). Some of the data, such as fingerprints, driver's license number, anticipated change of address, and whether the offender has had medical treatment ***91** afterwards, are kept confidential. §§ 12.63.010(b), 18.65.087(b). The following information is made available to the public: "the sex offender's or child kidnapper's name, aliases, address, photograph, physical description, description[,] license [and] identification numbers of motor vehicles, place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, length and conditions of sentence, and a statement as to whether the offender or kidnapper is in compliance with [the update] requirements ... or cannot be located." § 18.65.087(b). The Act does not specify the means by which the registry information must be made public. Alaska has chosen to make most of the nonconfidential information available on the Internet.

B

Respondents John Doe I and John Doe II were convicted of sexual abuse of a minor, an aggravated sex offense. John Doe I pleaded *nolo contendere* after a court determination that he had sexually abused his daughter for two years, when she was between the ages of 9 and 11; John Doe II entered a *nolo contendere* plea to sexual abuse of a 14–year–old child. Both were released from prison in 1990 and completed rehabilitative programs for sex offenders. Although convicted before the passage of the Act, respondents are covered by it. After the initial registration, they are required to submit quarterly verifications and notify the authorities of any changes. Both respondents, along with respondent Jane Doe, wife of John Doe I, brought an action under Rev. Stat. § 1979, 42 U.S.C. § 1983, seeking to declare the Act void as to them under the *Ex Post Facto* Clause of Article I, § 10, cl. 1, of the Constitution and the Due Process Clause of § 1 of the Fourteenth Amendment. The United States District Court for the District of Alaska granted summary judgment for petitioners. In agreement with the District Court, the Court of

Appeals for the Ninth Circuit determined the state legislature had intended the Act to be a nonpunitive, civil *92 regulatory scheme; but, in disagreement with the District Court, it held the effects of the Act were punitive despite the legislature's intent. In consequence, it held the Act violates the *Ex Post Facto* Clause. *Doe I v. Otte,* 259 F.3d 979 (C.A.9 2001). We granted certiorari. 534 U.S. 1126, 122 S.Ct. 1062, 151 L.Ed.2d 966 (2002).

II

1,2 This is the first time we have considered a claim that a sex offender registration and notification law constitutes retroactive punishment forbidden by the *Ex Post Facto* Clause. The framework for our inquiry, however, is well established. We must "ascertain whether the legislature meant the statute to establish **1147 'civil' proceedings." *Kansas v. Hendricks,* 521 U.S. 346, 361, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997). If the intention of the legislature was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, we must further examine whether the statutory scheme is " 'so punitive either in purpose or effect as to negate [the State's] intention' to deem it 'civil.' " *Ibid.*(quoting *United States v. Ward,* 448 U.S. 242, 248–249, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980)). Because we "ordinarily defer to the legislature's stated intent," *Hendricks, supra,* at 361, 117 S.Ct. 2072, " 'only the clearest proof' will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty," *Hudson v. United States,* 522 U.S. 93, 100, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997) (quoting *Ward, supra,* at 249, 100 S.Ct. 2636); see also *Hendricks, supra,* at 361, 117 S.Ct. 2072; *United States v. Ursery,* 518 U.S. 267, 290, 116 S.Ct. 2135, 135 L.Ed.2d 549 (1996); *United States v. One Assortment of 89 Firearms,* 465 U.S. 354, 365, 104 S.Ct. 1099, 79 L.Ed.2d 361 (1984).

A

3 Whether a statutory scheme is civil or criminal "is first of all a question of statutory construction." *Hendricks, supra,* at 361, 117 S.Ct. 2072 (internal quotation marks omitted); see also *Hudson, supra,* at 99, 118 S.Ct. 488. We consider the statute's text and its structure to determine the legislative objective. *Flemming v. Nestor,* 363 U.S. 603, 617, 80 S.Ct. 1367, 4 L.Ed.2d 1435 (1960). A conclusion that the legislature *93 intended to punish would satisfy an *ex post facto* challenge without further inquiry into its effects, so considerable deference must be accorded to the intent as the legislature has stated it.

4 The courts "must first ask whether the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other." *Hudson, supra,* at 99, 118 S.Ct. 488 (internal quotation marks omitted). Here, the Alaska Legislature expressed the objective of the law in the statutory text itself. The legislature found that "sex offenders pose a high risk of reoffending," and identified "protecting the public from sex offenders" as the "primary governmental interest" of the law. 1994 Alaska Sess. Laws ch. 41, § 1. The legislature further determined that "release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety." *Ibid.* As we observed in *Hendricks,* where we examined an *ex post facto* challenge to a postincarceration confinement of sex offenders, an imposition of restrictive measures on sex offenders adjudged to be dangerous is "a legitimate nonpunitive governmental objective and has been historically so regarded." 521 U.S., at 363, 117 S.Ct. 2072. In this case, as in *Hendricks,* "[n]othing on the face of the statute suggests that the legislature sought to create anything other than a civil ... scheme designed to protect the public from harm." *Id.,* at 361, 117 S.Ct. 2072.

Respondents seek to cast doubt upon the nonpunitive nature of the law's declared objective by pointing out that the Alaska Constitution lists the need for protecting the public as one of the purposes of criminal administration. Brief for Respondents 23 (citing Alaska Const., Art. I, § 12). As the Court stated in *Flemming v. Nestor,*rejecting an *ex post facto* challenge to a law terminating benefits to deported aliens, where a legislative restriction "is an incident of the State's power to protect the health and safety of

its citizens," it will be considered "as evidencing an intent to exercise that ***94** regulatory power, and not a purpose to add to the punishment." 363 U.S., at 616, 80 S.Ct. 1367 (citing *Hawker v. New York,* 170 U.S. 189, 18 S.Ct. 573, 42 L.Ed. 1002 (1898)). The Court repeated this principle in *89 Firearms,* upholding a statute requiring ****1148** forfeiture of unlicensed firearms against a double jeopardy challenge. The Court observed that, in enacting the provision, Congress " 'was concerned with the widespread traffic in firearms and with their general availability to those whose possession thereof was contrary to the public interest.' " 465 U.S., at 364, 104 S.Ct. 1099 (quoting *Huddleston v. United States,* 415 U.S. 814, 824, 94 S.Ct. 1262, 39 L.Ed.2d 782 (1974)). This goal was "plainly more remedial than punitive." 465 U.S., at 364, 104 S.Ct. 1099. These precedents instruct us that even if the objective of the Act is consistent with the purposes of the Alaska criminal justice system, the State's pursuit of it in a regulatory scheme does not make the objective punitive.

5 Other formal attributes of a legislative enactment, such as the manner of its codification or the enforcement procedures it establishes, are probative of the legislature's intent. See *Hendricks, supra,* at 361, 117 S.Ct. 2072; *Hudson, supra,* at 103, 118 S.Ct. 488; *89 Firearms, supra,* at 363, 104 S.Ct. 1099. In this case these factors are open to debate. The notification provisions of the Act are codified in the State's "Health, Safety, and Housing Code," § 18, confirming our conclusion that the statute was intended as a nonpunitive regulatory measure. Cf. *Hendricks, supra,* at 361, 117 S.Ct. 2072 (the State's "objective to create a civil proceeding is evidenced by its placement of the Act within the [State's] probate code, instead of the criminal code" (citations omitted)). The Act's registration provisions, however, are codified in the State's criminal procedure code, and so might seem to point in the opposite direction. These factors, though, are not dispositive. The location and labels of a statutory provision do not by themselves transform a civil remedy into a criminal one. In *89 Firearms,* the Court held a forfeiture provision to be a civil sanction even though the authorizing statute was in the criminal code. 465 U.S., at 364–365, 104 S.Ct. 1099. ***95** The Court rejected the argument that the placement demonstrated Congress' "intention to create an additional criminal sanction," observing that "both criminal and civil sanctions may be labeled 'penalties.' " *Id.,* at 364, n. 6, 104 S.Ct. 1099.

6 The same rationale applies here. Title 12 of Alaska's Code of Criminal Procedure (where the Act's registration provisions are located) contains many provisions that do not involve criminal punishment, such as civil procedures for disposing of recovered and seized property, Alaska Stat. § 12.36.010 *et seq.* (2000); laws protecting the confidentiality of victims and witnesses, § 12.61.010 *et seq.;* laws governing the security and accuracy of criminal justice information, § 12.62.110 *et seq.;* laws governing civil postconviction actions, § 12.72.010 *et seq.;* and laws governing actions for writs of habeas corpus, § 12.75.010 *et seq.,* which under Alaska law are "independent civil proceeding[s]," *State v. Hannagan,* 559 P.2d 1059, 1063 (Alaska 1977). Although some of these provisions relate to criminal administration, they are not in themselves punitive. The partial codification of the Act in the State's criminal procedure code is not sufficient to support a conclusion that the legislative intent was punitive.

The procedural mechanisms to implement the Act do not alter our conclusion. After the Act's adoption Alaska amended its Rules of Criminal Procedure concerning the acceptance of pleas and the entering of criminal judgments. The rule on pleas now requires the court to "infor[m] the defendant in writing of the requirements of [the Act] and, if it can be determined by the court, the period of registration required." Alaska Rule Crim. Proc. 11(c)(4) (2002). Similarly, the written judgments for sex offenses and child kidnapings "must set out the requirements of [the Act] and, if it can be determined by the court, whether that conviction will require the offender or kidnapper to register ****1149** for life or a lesser period." Alaska Stat. § 12.55.148(a) (2000).

The policy to alert convicted offenders to the civil consequences of their criminal conduct does not render the consequences ***96** themselves punitive. When a State sets up a regulatory scheme, it is logical to provide those persons subject to it with clear and unambiguous notice of the requirements and the

penalties for noncompliance The Act requires registration either before the offender's release from confinement or within a day of his conviction (if the offender is not imprisoned) Timely and adequate notice serves to apprise individuals of their responsibilities and to ensure compliance with the regulatory scheme Notice is important, for the scheme is enforced by criminal penalties. See §§ 11 56.835, 11.56 840. Although other methods of notification may be available, it is effective to make it part of the plea colloquy or the judgment of conviction. Invoking the criminal process in aid of a statutory regime does not render the statutory scheme itself punitive.

Our conclusion is strengthened by the fact that, aside from the duty to register, the statute itself mandates no procedures. Instead, it vests the authority to promulgate implementing regulations with the Alaska Department of Public Safety, §§ 12.63.020(b), 18.65.087(d)—an agency charged with enforcement of both criminal *and* civil regulatory laws. See, *e.g.*, § 17.30.100 (enforcement of drug laws), § 18.70.010 (fire protection); § 28.05.011 (motor vehicles and road safety); § 44.41.020 (protection of life and property). The Act itself does not require the procedures adopted to contain any safeguards associated with the criminal process That leads us to infer that the legislature envisioned the Act's implementation to be civil and administrative. By contemplating "distinctly civil procedures," the legislature "indicate[d] clearly that it intended a civil, not a criminal sanction " *Ursery,* 518 U.S., at 289, 116 S Ct. 2135 (internal quotation marks omitted; alteration in original).

We conclude, as did the District Court and the Court of Appeals, that the intent of the Alaska Legislature was to create a civil, nonpunitive regime.

***97** B

7 In analyzing the effects of the Act we refer to the seven factors noted in *Kennedy v Mendoza–Martinez,* 372 U.S. 144, 168–169, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963), as a useful framework. These factors, which migrated into our *ex post facto* case law from double jeopardy jurisprudence, have their earlier origins in cases under the Sixth and Eighth Amendments, as well as the Bill of Attainder and the *Ex Post Facto*Clauses. See *id.,* at 168–169, and nn. 22–28, 83 S.Ct. 554. Because the *Mendoza–Martinez* factors are designed to apply in various constitutional contexts, we have said they are "neither exhaustive nor dispositive," *United States v. Ward,* 448 U.S., at 249, 100 S.Ct. 2636, *89 Firearms,* 465 U.S., at 365, n. 7, 104 S.Ct. 1099, but are "useful guideposts," *Hudson,* 522 U.S., at 99, 118 S Ct. 488. The factors most relevant to our analysis are whether, in its necessary operation, the regulatory scheme· has been regarded in our history and traditions as a punishment, imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose

8 A historical survey can be useful because a State that decides to punish an individual is likely to select a means deemed punitive in our tradition, so that the public will recognize it as such. The Court of Appeals observed that the sex offender registration and notification statutes "are of fairly recent origin," 259 F.3d, at 989,which suggests that the statute was not meant as a punitive measure, or, at least, that it did not involve a traditional means of punishing. Respondents argue, ***1150**however, that the Act—and, in particular, its notification provisions—resemble shaming punishments of the colonial period. Brief for Respondents 33–34 (citing A. Earle, Curious Punishments of Bygone Days 1–2 (1896)).

Some colonial punishments indeed were meant to inflict public disgrace. Humiliated offenders were required "to stand in public with signs cataloguing their offenses "Hirsch, From Pillory to Penitentiary· The Rise of Criminal ***98** Incarceration in Early Massachusetts, 80 Mich. L.Rev. 1179, 1226 (1982); see also L. Friedman, Crime and Punishment in American History 38 (1993). At times the labeling would be permanent· A murderer might be branded with an "M," and a thief with a "T " R. Semmes, Crime and Punishment in Early Maryland 35 (1938), see also Massaro, Shame, Culture, and American Criminal Law, 89 Mich. L.Rev. 1880, 1913 (1991). The aim was to make these offenders suffer "permanent

stigmas, which in effect cast the person out of the community." *Ibid.;* see also Friedman, *supra,* at 40; Hirsch, *supra,* at 1228. The most serious offenders were banished, after which they could neither return to their original community nor, reputation tarnished, be admitted easily into a new one. T. Blomberg & K. Lucken, American Penology: A History of Control 30–31 (2000). Respondents contend that Alaska's compulsory registration and notification resemble these historical punishments, for they publicize the crime, associate it with his name, and, with the most serious offenders, do so for life.

Any initial resemblance to early punishments is, however, misleading. Punishments such as whipping, pillory, and branding inflicted physical pain and staged a direct confrontation between the offender and the public. Even punishments that lacked the corporal component, such as public shaming, humiliation, and banishment, involved more than the dissemination of information. They either held the person up before his fellow citizens for face-to-face shaming or expelled him from the community. See Earle, *supra,* at 20, 35–36, 51–52; Massaro, *supra,* at 1912–1924; Semmes, *supra,* at 39–40; Blomberg & Lucken, *supra,* at 30–31. By contrast, the stigma of Alaska's Megan's Law results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public. Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment. On the contrary, ***99** our criminal law tradition insists on public indictment, public trial, and public imposition of sentence. Transparency is essential to maintaining public respect for the criminal justice system, ensuring its integrity, and protecting the rights of the accused. The publicity may cause adverse consequences for the convicted defendant, running from mild personal embarrassment to social ostracism. In contrast to the colonial shaming punishments, however, the State does not make the publicity and the resulting stigma an integral part of the objective of the regulatory scheme.

The fact that Alaska posts the information on the Internet does not alter our conclusion. It must be acknowledged that notice of a criminal conviction subjects the offender to public shame, the humiliation increasing in proportion to the extent of the publicity. And the geographic reach of the Internet is greater than anything which could have been designed in colonial times. These facts do not render Internet notification punitive. The purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation.

The State's Web site does not provide the public with means to shame the offender by, say, posting comments underneath ***1151** his record. An individual seeking the information must take the initial step of going to the Department of Public Safety's Web site, proceed to the sex offender registry, and then look up the desired information. The process is more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality. The Internet makes the document search more efficient, cost effective, and convenient for Alaska's citizenry.

We next consider whether the Act subjects respondents to an "affirmative disability or restraint." *Mendoza–Martinez, supra,* at 168, 83 S.Ct. 554. Here, we inquire how the effects of the ***100** Act are felt by those subject to it. If the disability or restraint is minor and indirect, its effects are unlikely to be punitive.

The Act imposes no physical restraint, and so does not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint. *Hudson,* 522 U.S., at 104, 118 S.Ct. 488. The Act's obligations are less harsh than the sanctions of occupational debarment, which we have held to be nonpunitive. See *ibid.* (forbidding further participation in the banking industry); *De Veau v. Braisted,* 363 U.S. 144, 80 S.Ct. 1146, 4 L.Ed.2d 1109 (1960) (forbidding work as a union official); *Hawker v. New*

York, 170 U S 189, 18 S Ct 573, 42 L Ed. 1002 (1898) (revocation of a medical license) The Act does not restrain activities sex offenders may pursue but leaves them free to change jobs or residences

The Court of Appeals sought to distinguish *Hawker* and cases which have followed it on the grounds that the disability at issue there was specific and "narrow," confined to particular professions, whereas "the procedures employed under the Alaska statute are likely to make [respondents] *completely unemployable* " because "employers will not want to risk loss of business when the public learns that they have hired sex offenders " 259 F 3d, at 988 This is conjecture Landlords and employers could conduct background checks on the criminal records of prospective employees or tenants even with the Act not in force The record in this case contains no evidence that the Act has led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred through the use of routine background checks by employers and landlords The Court of Appeals identified only one incident from the 7–year history of Alaska's law where a sex offender suffered community hostility and damage to his business after the information he submitted to the registry became public *Id.,* at 987–988 This could have occurred in any event, because the information about the individual's conviction was already in the public domain

***101** Although the public availability of the information may have a lasting and painful impact on the convicted sex offender, these consequences flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record. The State makes the facts underlying the offenses and the resulting convictions accessible so members of the public can take the precautions they deem necessary before dealing with the registrant

The Court of Appeals reasoned that the requirement of periodic updates imposed an affirmative disability In reaching this conclusion, the Court of Appeals was under a misapprehension, albeit one created by the State itself during the argument below, that the offender had to update the registry in person *Id.,* at 984, n 4 The State's representation was erroneous The Alaska statute, on its face, does not require these updates to be made in person And, as respondents conceded at the oral argument before us, the record contains no indication that an in-person appearance requirement has been imposed on any sex offender subject to the Act. Tr of Oral Arg 26–28

****1152** The Court of Appeals held that the registration system is parallel to probation or supervised release in terms of the restraint imposed. 259 F 3d, at 987. This argument has some force, but, after due consideration, we reject it Probation and supervised release entail a series of mandatory conditions and allow the supervising officer to seek the revocation of probation or release in case of infraction. See generally *Johnson v United States,* 529 U S 694, 120 S.Ct. 1795, 146 L.Ed.2d 727 (2000), *Griffin v Wisconsin,* 483 U.S 868, 107 S Ct. 3164, 97 L.Ed.2d 709 (1987). By contrast, offenders subject to the Alaska statute are free to move where they wish and to live and work as other citizens, with no supervision Although registrants must inform the authorities after they change their facial features (such as growing a beard), borrow a car, or seek psychiatric treatment, they are not required to seek permission to do so A sex offender ***102** who fails to comply with the reporting requirement may be subjected to a criminal prosecution for that failure, but any prosecution is a proceeding separate from the individual's original offense Whether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved, are concerns beyond the scope of this opinion It suffices to say the registration requirements make a valid regulatory program effective and do not impose punitive restraints in violation of the *Ex Post Facto* Clause

The State concedes that the statute might deter future crimes Respondents seize on this proposition to argue that the law is punitive, because deterrence is one purpose of punishment Brief for Respondents 37 This proves too much Any number of governmental programs might deter crime without imposing punishment "To hold that the mere presence of a deterrent purpose renders such sanctions 'criminal'

would severely undermine the Government's ability to engage in effective regulation." *Hudson, supra,* at 105, 118 S.Ct. 488; see also *Ursery,* 518 U.S., at 292, 116 S.Ct. 2135;*89 Firearms,* 465 U.S., at 364, 104 S.Ct. 1099.

The Court of Appeals was incorrect to conclude that the Act's registration obligations were retributive because "the length of the reporting requirement appears to be measured by the extent of the wrongdoing, not by the extent of the risk posed." 259 F.3d, at 990. The Act, it is true, differentiates between individuals convicted of aggravated or multiple offenses and those convicted of a single nonaggravated offense. Alaska Stat. § 12.63.020(a)(1) (2000). The broad categories, however, and the corresponding length of the reporting requirement, are reasonably related to the danger of recidivism, and this is consistent with the regulatory objective.

The Act's rational connection to a nonpunitive purpose is a "[m]ost significant" factor in our determination that the statute's effects are not punitive. *Ursery, supra,* at 290, 116 S.Ct. 2135. As the Court of Appeals acknowledged, the Act has a legitimate ***103**nonpunitive purpose of "public safety, which is advanced by alerting the public to the risk of sex offenders in their communit[y]." 259 F.3d, at 991. Respondents concede, in turn, that "this alternative purpose is valid, and rational." Brief for Respondents 38. They contend, however, that the Act lacks the necessary regulatory connection because it is not "narrowly drawn to accomplish the stated purpose." *Ibid.* A statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance. The imprecision respondents rely upon does not suggest that the Act's nonpunitive purpose is a "sham or mere pretext." *Hendricks,* 521 U.S., at 371, 117 S.Ct. 2072 (KENNEDY, J., concurring).

In concluding the Act was excessive in relation to its regulatory purpose, the Court of Appeals relied in large part on two propositions: first, that the statute ***1153** applies to all convicted sex offenders without regard to their future dangerousness; and, second, that it places no limits on the number of persons who have access to the information. 259 F.3d, at 991–992. Neither argument is persuasive.

Alaska could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism. The legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is "frightening and high." *McKune v. Lile,* 536 U.S. 24, 34, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002); see also *id.,* at 33, 122 S.Ct. 2017 ("When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault" (citing U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 27 (1997); U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997))).

9,10 The *Ex Post Facto* Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences. ***104** We have upheld against *ex post facto* challenges laws imposing regulatory burdens on individuals convicted of crimes without any corresponding risk assessment. See *De Veau,* 363 U.S., at 160, 80 S.Ct. 1146; *Hawker,* 170 U.S., at 197, 18 S.Ct. 573. As stated in *Hawker:* "Doubtless, one who has violated the criminal law may thereafter reform and become in fact possessed of a good moral character. But the legislature has power in cases of this kind to make a rule of universal application...." *Ibid.* The State's determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment under the *Ex Post Facto* Clause.

Our decision in *Hendricks,* on which respondents rely, Brief for Respondents 39, is not to the contrary. The State's objective in *Hendricks* was involuntary (and potentially indefinite) confinement of "particularly dangerous individuals." 521 U.S., at 357–358, 364, 117 S.Ct. 2072. The magnitude of the

restraint made individual assessment appropriate The Act, by contrast, imposes the more minor condition of registration In the context of the regulatory scheme the State can dispense with individual predictions of future dangerousness and allow the public to assess the risk on the basis of accurate, nonprivate information about the registrants' convictions without violating the prohibitions of the *Ex Post Facto* Clause

The duration of the reporting requirements is not excessive Empirical research on child molesters, for instance, has shown that, "[c]ontrary to conventional wisdom, most reoffenses do not occur within the first several years after release," but may occur "as late as 20 years following release." National Institute of Justice, R Prentky, R Knight, & A Lee, U S Dept. of Justice, Child Sexual Molestation Research Issues 14 (1997)

The Court of Appeals' reliance on the wide dissemination of the information is also unavailing. The Ninth Circuit ***105** highlighted that the information was available "world-wide" and "[b]roadcas[t]" in an indiscriminate manner 259 F 3d, at 992 As we have explained, however, the notification system is a passive one· An individual must seek access to the information The Web site warns that the use of displayed information "to commit a criminal act against another person is subject to criminal prosecution " http // www dps state.ak.us/nSorcr/asp/ (as visited Jan. 17, 2003) (available in the Clerk of Court's case file) Given the general mobility of our population, for Alaska to make its registry system available and easily accessible throughout the State was not so excessive a regulatory requirement as to become a punishment. See D Schram & ***1154** C Milloy, Community Notification A Study of Offender Characteristics and Recidivism 13 (1995) (38% of recidivist sex offenses in the State of Washington took place in jurisdictions other than where the previous offense was committed)

The excessiveness inquiry of our *ex post facto* jurisprudence is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy. The question is whether the regulatory means chosen are reasonable in light of the nonpunitive objective The Act meets this standard

The two remaining *Mendoza–Martinez* factors—whether the regulation comes into play only on a finding of scienter and whether the behavior to which it applies is already a crime—are of little weight in this case. The regulatory scheme applies only to past conduct, which was, and is, a crime This is a necessary beginning point, for recidivism is the statutory concern. The obligations the statute imposes are the responsibility of registration, a duty not predicated upon some present or repeated violation

Our examination of the Act's effects leads to the determination that respondents cannot show, much less by the clearest proof, that the effects of the law negate Alaska's intention to establish a civil regulatory scheme The Act is nonpunitive, ***106**and its retroactive application does not violate the *Ex Post Facto* Clause. The judgment of the Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion

It is so ordered

Justice THOMAS, concurring
I join the Court's opinion upholding the Alaska Sex Offender Registration Act (ASORA) against *ex post facto* challenge I write separately, however, to reiterate that "there is no place for [an implementation-based] challenge" in our *ex post facto*jurisprudence *Seling v Young*, 531 U S 250, 273, 121 S Ct 727, 148 L Ed.2d 734 (2001) (THOMAS, J , concurring in judgment) Instead, the determination whether a scheme is criminal or civil must be limited to the analysis of the obligations actually created by statute See *id*, at 273–274, 121 S Ct 727 ("[T]o the extent that the conditions result from the fact that the statute is not being applied according to its terms, the conditions are *not* the effect of the statute, but rather the

effect of its improper implementation"). As we have stated, the categorization of a proceeding as civil or criminal is accomplished by examining "the statute on its face." *Hudson v. United States,* 522 U.S. 93, 100, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997) (internal quotation marks omitted).

In this case, ASORA does not specify a means of making registry information available to the public. It states only that

"[i]nformation about a sex offender ... that is contained in the central registry ... is confidential and not subject to public disclosure except as to the sex offender's ... name, aliases, address, photograph, physical description, description of motor vehicles, license numbers of motor vehicles, and vehicle identification numbers of motor vehicles, place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, length and conditions of sentence, and a ***107** statement as to whether the offender ... is in compliance with requirements of AS 12.63 or cannot be located." Alaska Stat. § 18.65.087(b) (2000).

By considering whether Internet dissemination renders ASORA punitive, the Court has strayed from the statute. With this qualification, I concur.

Justice SOUTER, concurring in the judgment.
I agree with the Court that Alaska's Sex Offender Registration Act does not amount to an *ex post facto* law. But the majority comes to that conclusion by a different ****1155**path from mine, and I concur only in the judgment.

As the Court says, our cases have adopted a two-step enquiry to see whether a law is punitive for purposes of various constitutional provisions including the *Ex Post Facto* Clause. At the first step in applying the so-called *Kennedy-Ward* test, we ask whether the legislature intended a civil or criminal consequence; at the second, we look behind the legislature's preferred classification to the law's substance, focusing on its purpose and effects. See *United States v. Ward,* 448 U.S. 242, 248–249, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980); *Kennedy v. Mendoza—Martinez,* 372 U.S. 144, 168–169, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963). We have said that " 'only the clearest proof ' " that a law is punitive based on substantial factors will be able to overcome the legislative categorization. *Ward, supra,* at 249, 100 S.Ct. 2636 (quoting *Flemming v. Nestor,*363 U.S. 603, 617, 80 S.Ct. 1367, 4 L.Ed.2d 1435 (1960)). I continue to think, however, that this heightened burden makes sense only when the evidence of legislative intent clearly points in the civil direction. See *Hudson v. United States,* 522 U.S. 93, 113–114, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997) (SOUTER, J., concurring in judgment). This means that for me this is a close case, for I not only agree with the Court that there is evidence pointing to an intended civil characterization of the Act, but also see considerable evidence pointing the other way.

The Act does not expressly designate the requirements imposed as "civil," a fact that itself makes this different from ***108** our past cases, which have relied heavily on the legislature's stated label in finding a civil intent. See *Hudson, supra,* at 103, 118 S.Ct. 488; *Kansas v. Hendricks,* 521 U.S. 346, 361, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997); *Allen v. Illinois,* 478 U.S. 364, 368, 106 S.Ct. 2988, 92 L.Ed.2d 296 (1986). The placement of the Act in the State's code, another important indicator, see *Hendricks, supra,* at 361, 117 S.Ct. 2072, also leaves matters in the air, for although the section establishing the registry is among the code's health and safety provisions, which are civil, see Alaska Stat. § 18.65.087 (2000), the section requiring registration occurs in the title governing criminal procedure, see § 12.63.010. What is more, the legislature made written notification of the requirement a necessary condition of any guilty plea, see Alaska Rule Crim. Proc. 11(c)(4) (2002), and, perhaps most significant, it mandated a statement of the requirement as an element of the actual judgment of conviction for covered sex offenses, see Alaska Stat. § 12.55.148 (2000); Alaska Rule Crim. Proc. 32(c) (2002). Finally, looking to enforcement, see *Hudson, supra,* at 103, 118 S.Ct. 488, offenders are obliged, at least initially, to register

with state and local police, see §§ 12.63.010(b), (c), although the actual information so obtained is kept by the State's Department of Public Safety, a regulatory agency, see § 18.65.087(a). These formal facts do not force a criminal characterization, but they stand in the way of asserting that the statute's intended character is clearly civil

The substantial indicators relevant at step two of the *Kennedy-Ward* analysis likewise point in different directions. To start with purpose, the Act's legislative history shows it was designed to prevent repeat sex offenses and to aid the investigation of reported offenses. See 1994 Alaska Sess. Laws ch. 41, § 1; Brief for Petitioners 26, n. 13. Ensuring public safety is, of course, a fundamental regulatory goal, see, *e.g., United States v Salerno,* 481 U.S. 739, 747, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), and this objective should be given serious weight in the analyses. But, at the same time, it would be naive to look no ***109** further, given pervasive attitudes toward sex offenders, see *infra,* at 1156, n. See *Weaver v. Graham,* 450 U.S. 24, 29, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981) *(Ex Post Facto* Clause was meant to prevent "arbitrary and potentially vindictive legislation"). The fact that the Act uses past crime as the touchstone, probably ****1156** sweeping in a significant number of people who pose no real threat to the community, serves to feed suspicion that something more than regulation of safety is going on; when a legislature uses prior convictions to impose burdens that outpace the law's stated civil aims, there is room for serious argument that the ulterior purpose is to revisit past crimes, not prevent future ones. See *Kennedy, supra,* at 169, 83 S.Ct. 554

That argument can claim support, too, from the severity of the burdens imposed. Widespread dissemination of offenders' names, photographs, addresses, and criminal history serves not only to inform the public but also to humiliate and ostracize the convicts. It thus bears some resemblance to shaming punishments that were used earlier in our history to disable offenders from living normally in the community. See, *e.g*, Massaro, Shame, Culture, and American Criminal Law, 89 Mich. L.Rev. 1880, 1913 (1991). While the Court accepts the State's explanation that the Act simply makes public information available in a new way, *ante,* at 1150–1151, the scheme does much more. Its point, after all, is to send a message that probably would not otherwise be heard, by selecting some conviction information out of its corpus of penal records and broadcasting it with a warning. Selection makes a statement, one that affects common reputation and sometimes carries harsher consequences, such as exclusion from jobs or housing, harassment, and physical harm.[*]

***110** To me, the indications of punitive character stated above and the civil indications weighed heavily by the Court are in rough equipoise. Certainly the formal evidence of legislative intent does not justify requiring the " 'clearest proof' " of penal substance in this case, see *Hudson,* 522 U.S., at 113–114, 118 S.Ct. 488 (SOUTER, J., concurring in judgment), and the substantial evidence does not affirmatively show with any clarity that the Act is valid. What tips the scale for me is the presumption of constitutionality normally accorded a State's law. That presumption gives the State the benefit of the doubt in close cases like this one, and on that basis alone I concur in the Court's judgment.

Justice STEVENS, dissenting in No. 01–729 and concurring in the judgment in No. 01–1231.[*] These two cases raise questions about statutes that impose affirmative obligations on convicted sex offenders. The question in No. 01–729 is whether the Alaska Sex Offender Registration Act is an ****1157** *ex post facto* law, and in No. 01–1231 ***111** it is whether Connecticut's similar law violates the Due Process Clause.

The Court's opinions in both cases fail to decide whether the statutes deprive the registrants of a constitutionally protected interest in liberty. If no liberty interest were implicated, it seems clear that neither statute would raise a colorable constitutional claim Cf. *Meachum v. Fano,* 427 U.S 215, 96 S Ct. 2532, 49 L.Ed.2d 451 (1976). Proper analysis of both cases should therefore begin with a consideration of the impact of the statutes on the registrants' freedom.

The statutes impose significant affirmative obligations and a severe stigma on every person to whom they apply. In Alaska, an offender who has served his sentence for a single, nonaggravated crime must provide local law enforcement authorities with extensive personal information—including his address, his place of employment, the address of his employer, the license plate number and make and model of any car to which he has access, a current photo, identifying features, and medical treatment—at least once a year for 15 years. If one has been convicted of an aggravated offense or more than one offense, he must report this same information at least quarterly for life. Moreover, if he moves, he has *one* working day to provide updated information. Registrants may not shave their beards, color their hair, change their employer, or borrow a car without reporting those events to the authorities. Much of this registration information is placed on the Internet. In Alaska, the registrant's face appears on a webpage under the label "Registered Sex Offender." His physical description, street address, employer address, and conviction information are also displayed on this page.

The registration and reporting duties imposed on convicted sex offenders are comparable to the duties imposed on other convicted criminals during periods of supervised release or parole. And there can be no doubt that the "[w]idespread public access," *ante,* at 1150 (opinion in No. 01–729), ***112** to this personal and constantly updated information has a severe stigmatizing effect. See Brief for the Office of the Public Defender for the State of New Jersey et al. as *Amici Curiae* 7–21 (providing examples of threats, assaults, loss of housing, and loss of jobs experienced by sex offenders after their registration information was made widely available). In my judgment, these statutes unquestionably affect a constitutionally protected interest in liberty. Cf. *Wisconsin v. Constantineau,* 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971).

It is also clear beyond peradventure that these unique consequences of conviction of a sex offense are punitive. They share three characteristics, which in the aggregate are not present in any civil sanction. The sanctions (1) constitute a severe deprivation of the offender's liberty, (2) are imposed on everyone who is convicted of a relevant criminal offense, and (3) are imposed only on those criminals. Unlike any of the cases that the Court has cited, a criminal conviction under these statutes provides both a *sufficient* and a *necessary* condition for the sanction.

To be sure, there are cases in which we have held that it was not punishment and thus not a violation of the *Ex Post Facto* Clause to deny future privileges to individuals who were convicted of crimes. See, *e.g., De Veau v. Braisted,* 363 U.S. 144, 80 S.Ct. 1146, 4 L.Ed.2d 1109 (1960) (upholding prohibition of convicted felons from working for waterfront unions); *Hawker v. New York,* 170 U.S. 189, 18 S.Ct. 573, 42 L.Ed. 1002 (1898) (upholding prohibition of doctors who had been convicted of a felony from practicing medicine). Those cases are distinguishable because in each the prior conviction was a sufficient condition for the imposition of the burden, but it was not a necessary one. That is, one may be barred from participation in a union because he has not paid fines imposed on ***1158** him. See *NLRB v. Allis–Chalmers Mfg. Co.,* 388 U.S. 175, 191–192, 87 S.Ct. 2001, 18 L.Ed.2d 1123 (1967). And a doctor may not be permitted to practice medicine because she is no longer competent to do so. See, *e.g.,* N.J. Stat. Ann. § 45:1–21 (West Supp.2002).

***113** Likewise, in *Kansas v. Hendricks,* 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997), the Court held that a law that permitted the civil commitment of persons who had committed or had been charged with a sexually violent offense was not an *ex post facto* law. But the fact that someone had been convicted was not sufficient to authorize civil commitment under Kansas law because Kansas required another proceeding to determine if such a person suffered from a " 'mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence.' " *Id.,* at 352, 117 S.Ct. 2072. Nor was the conviction even a necessary predicate for the commitment. See *ibid.* (Kansas' civil commitment procedures also applied to individuals charged with a sexually violent offense but found incompetent to stand for trial, or found not guilty by reason of insanity or by reason of mental disease or

defect) While one might disagree in other respects with *Hendricks,* it is clear that a conviction standing alone did not make anyone eligible for the burden imposed by that statute

No matter how often the Court may repeat and manipulate multifactor tests that have been applied in wholly dissimilar cases involving only one or two of these three aspects of these statutory sanctions, it will never persuade me that the registration and reporting obligations that are imposed on convicted sex offenders *and on no one else* as a result of their convictions are not part of their punishment. In my opinion, a sanction that (1) is imposed on everyone who commits a criminal offense, (2) is not imposed on anyone else, and (3) severely impairs a person's liberty is punishment.

It is therefore clear to me that the Constitution prohibits the addition of these sanctions to the punishment of persons who were tried and convicted before the legislation was enacted. As the Court recognizes, "recidivism is the statutory concern" that provides the supposed justification for the imposition of such retroactive punishment. *Ante,* at 1154 (opinion in No. 01–729). That is the principal rationale that underlies the "three strikes" statute that the Court has upheld ***114** in *Ewing v. California, post,* 538 U.S. 11, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003). Reliance on that rationale here highlights the conclusion that the retroactive application of these statutes constitutes a flagrant violation of the protections afforded by the Double Jeopardy and *Ex Post Facto* Clauses of the Constitution.

I think it equally clear, however, that the State may impose registration duties and may publish registration information as a part of its punishment of this category of defendants. Looking to the future, these aspects of their punishment are adequately justified by two of the traditional aims of punishment—retribution and deterrence. Moreover, as a matter of procedural fairness, Alaska requires its judges to include notice of the registration requirements in judgments imposing sentences on convicted sex offenders and in the colloquy preceding the acceptance of a plea of guilty to such an offense. See Alaska Rules Crim. Proc. 11(c)(4) and 32(c) (2002) Thus, I agree with the Court that these statutes are constitutional as applied to postenactment offenses.

Accordingly, I would hold that the Alaska statute violates the constitutional prohibition on *ex post facto* laws. Because I believe registration and publication are a permissible component of the punishment for this category of crimes, however, for those convicted of offenses committed after the effective date of such legislation, there would be no separate procedural due process violation so long as a defendant is provided a constitutionally adequate trial. ***1159** I therefore concur in the Court's disposition of the Connecticut case, No. 01–1231, and I respectfully dissent from its disposition of the Alaska case, No 01–729.

Justice GINSBURG, with whom Justice BREYER joins, dissenting.
As Justice SOUTER carefully explains, it is unclear whether the Alaska Legislature conceived of the State's Sex Offender Registration Act as a regulatory measure or as a ***115** penal law. See *ante,* at 1154–1156 (opinion concurring in judgment). Accordingly, in resolving whether the Act ranks as penal for *ex post facto* purposes, I would not demand "the clearest proof" that the statute is in effect criminal rather than civil. Instead, guided by *Kennedy v Mendoza–Martinez,* 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963), I would neutrally evaluate the Act's purpose and effects. See *id.,* at 168–169, 83 S.Ct. 554 (listing seven factors courts should consider "[a]bsent conclusive evidence of [legislative] intent as to the penal nature of a statute"); cf. *Hudson v United States,* 522 U.S. 93, 115, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997)(BREYER, J., concurring in judgment) ("[I]n fact if not in theory, the Court has simply applied factors of the *Kennedy* variety to the matter at hand.").[1]

Measured by the *Mendoza–Martinez* factors, I would hold Alaska's Act punitive in effect Beyond doubt, the Act involves an "affirmative disability or restraint." 372 U.S , at 168, 83 S Ct 554 As Justice STEVENS and Justice SOUTER spell out, Alaska's Act imposes onerous and intrusive obligations on

convicted sex offenders; and it exposes registrants, through aggressive public notification of their crimes, to profound humiliation and community-wide ostracism. See *ante,* at 1156, and n. (SOUTER, J., concurring in judgment); *ante,* at 1157 (STEVENS, J., dissenting in No. 01–729 and concurring in judgment in No. 01–1231).

Furthermore, the Act's requirements resemble historically common forms of punishment. See *Mendoza–Martinez,* 372 U.S., at 168, 83 S.Ct. 554. Its registration and reporting provisions are comparable to conditions of supervised release or parole; its ***116** public notification regimen, which permits placement of the registrant's face on a webpage under the label "Registered Sex Offender," calls to mind shaming punishments once used to mark an offender as someone to be shunned. See *ante,* at 1157 (STEVENS, J., dissenting in No. 01–729 and concurring in judgment in No. 01–1231); *ante,* at 1156 (SOUTER, J., concurring in judgment).

Telling too, as Justice SOUTER observes, past crime alone, not current dangerousness, is the "touchstone" triggering the Act's obligations. *Ante,* at 1155 (opinion concurring in judgment); see *ante,* at 1157–1158 (STEVENS, J., dissenting in No. 01–729 and concurring in judgment in No. 01–1231). This touchstone adds to the impression that the Act retributively targets past guilt, *i.e.,* that it "revisit[s] past crimes [more than it] prevent[s] future ones." *Ante,* at 1156 (SOUTER, J., concurring in judgment); see *Mendoza–Martinez,* 372 U.S., at 168, 83 S.Ct. 554.

Tending the other way, I acknowledge, the Court has ranked some laws civil and nonpunitive although they impose significant disabilities or restraints. See, *e.g., Flemming v. Nestor,* 363 U.S. 603, 80 S.Ct. 1367, 4 L.Ed.2d 1435 (1960) (termination of accrued disability benefits payable to deported resident aliens); *Kansas v. Hendricks,* ***1160** 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997) (civil confinement of mentally ill sex offenders). The Court has also deemed some laws nonpunitive despite "punitive aspects." See *United States v. Ursery,* 518 U.S. 267, 290, 116 S.Ct. 2135, 135 L.Ed.2d 549 (1996).

What ultimately tips the balance for me is the Act's excessiveness in relation to its nonpunitive purpose. See *Mendoza–Martinez,* 372 U.S., at 169, 83 S.Ct. 554. As respondents concede, see Brief for Respondents 38, the Act has a legitimate civil purpose: to promote public safety by alerting the public to potentially recidivist sex offenders in the community. See *ante,* at 1152 (majority opinion). But its scope notably exceeds this purpose. The Act applies to all convicted sex offenders, without regard to their future dangerousness. And the duration of the reporting requirement is keyed not ***117** to any determination of a particular offender's risk of reoffending, but to whether the offense of conviction qualified as aggravated. The reporting requirements themselves are exorbitant: The Act requires aggravated offenders to engage in perpetual quarterly reporting, even if their personal information has not changed. See *ante,* at 1146. And meriting heaviest weight in my judgment, the Act makes no provision whatever for the possibility of rehabilitation: Offenders cannot shorten their registration or notification period, even on the clearest demonstration of rehabilitation or conclusive proof of physical incapacitation.[2] However plain it may be that a former sex offender currently poses no threat of recidivism, he will remain subject to long-term monitoring and inescapable humiliation.

John Doe I, for example, pleaded *nolo contendere* to a charge of sexual abuse of a minor nine years before the Alaska Act was enacted. He successfully completed a treatment program, and gained early release on supervised probation in part because of his compliance with the program's requirements and his apparent low risk of reoffense. Brief for Respondents 1. He subsequently remarried, established a business, and was reunited with his family. *Ibid.* He was also granted custody of a minor daughter, based on a court's determination that he had been successfully rehabilitated. See *Doe I v. Otte,* 259 F.3d 979, 983 (C.A.9 2001). The court's determination rested in part on psychiatric evaluations concluding that Doe had "a very low risk of re-offending" and is "not a pedophile." *Ibid.* (internal quotation marks omitted).

Notwithstanding this strong evidence of rehabilitation, the Alaska Act requires Doe to report personal information to the State four times per year, and permits the State publicly ***118** to label him a "Registered Sex Offender" for the rest of his life

Satisfied that the Act is ambiguous in intent and punitive in effect, I would hold its retroactive application incompatible with the *Ex Post Facto* Clause, and would therefore affirm the judgment of the Court of Appeals

Footnotes

*The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v Detroit Timber & Lumber Co*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499

*I seriously doubt that the Act's requirements are "less harsh than the sanctions of occupational debarment" that we upheld in *Hudson v. United States*, 522 U.S. 93, 118 S.Ct. 488, 139 L Ed.2d 450 (1997), *De Veau v. Braisted*, 363 U.S 144, 80 S.Ct. 1146, 4 L Ed.2d 1109 (1960), and *Hawker v New York*, 170 U S. 189, 18 S.Ct. 573, 42 L.Ed. 1002 (1898). See *ante*, at 1151 It is true that the Act imposes no formal proscription against any particular employment, but there is significant evidence of onerous practical effects of being listed on a sex offender registry. See, *e.g*, *Doe v Pataki*, 120 F.3d 1263, 1279 (C.A.2 1997) (noting "numerous instances in which sex offenders have suffered harm in the aftermath of notification—ranging from public shunning, picketing, press vigils, ostracism, loss of employment, and eviction, to threats of violence, physical attacks, and arson"); *E B v Verniero*, 119 F.3d 1077, 1102 (C.A.3 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 and, while such incidents of 'vigilante justice' are not common, they happen with sufficient frequency and publicity that registrants justifiably live in fear of them"); Brief for Office of the Public Defender for the State of New Jersey et al as *Amici Curiae* 7–21 (describing specific incidents).

*[This opinion applies also to No 01–1231, *Connecticut Dept of Public Safety v Doe, post*, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003).]

1 The *Mendoza–Martinez* factors include "[w]hether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative [nonpunitive] purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned." 372 U.S., at 168–169, 83 S.Ct. 554.

2 For the reasons stated by Justice SOUTER, see *ante*, at 1156, n. (opinion concurring in judgment), I do not find the Court's citations to *Hawker v New York*, 170 U.S 189, 18 S.Ct. 573, 42 L.Ed. 1002 (1898), and *De Veau v Braisted*, 363 U.S. 144, 80 S.Ct. 1146, 4 L Ed.2d 1109 (1960), see *ante*, at 1152–1153 (majority opinion), convincingly responsive to this point.

405 F.3d 700
United States Court of Appeals,
Eighth Circuit.

John DOE, I, on their own behalf and as representatives of the class of all sex offenders in the State of Iowa; John Doe, II, on their own behalf and as representatives of the class of all sex offenders in the State of Iowa; John Doe, III, on their own behalf and as representatives of the class of all sex offenders in the State of Iowa, Appellees,

v.

Tom MILLER, Iowa Attorney General; Appellant.

J. Patrick White, as representatives of the class of all county attorneys in Iowa; Michael Wolf, as representatives of the class of all county attorneys in Iowa, Defendants.

No. 04–1568.
Submitted: Nov. 4, 2004.Filed: April 29, 2005.Rehearing and Rehearing En Banc Denied June 30, 2005.*

Synopsis

Background: Sex offenders brought class action challenging constitutionality of Iowa statute that prohibited person who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility. The United States District Court for the Southern District of Iowa, Robert W. Pratt, J., granted judgment for sex offenders, 298 F.Supp.2d 844. State appealed.

Holdings: The Court of Appeals, Colloton, Circuit Judge, held that:
1 statute did not violate due process clause of Fourteenth Amendment on its face for lack of notice;
2 statute did not foreclose opportunity to be heard;
3 statute did not contravene principles of procedural due process;
4 statute did not infringe upon constitutional liberty interest relating to matters of marriage and family in fashion that required heightened scrutiny;
5 statute did not interfere with constitutional right to travel;
6 statute did not implicate alleged right to intrastate travel;
7 prohibition was rational way of promoting safety of children; and
8 statute was not retroactive criminal punishment in violation of ex post facto clause.

Reversed and remanded.

Melloy, Circuit Judge, filed opinion concurring and dissenting.

West Headnotes (22)

1 Constitutional Law Classification and registration; restrictions and obligations
Mental Health Sex offenders
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not violate due process clause of Fourteenth Amendment on its face for lack of notice, although some cities were unable to provide sex offenders with information about location of all schools and registered child care facilities and it was difficult to measure

restricted areas, which were measured "as the crow flies" from school or child care facility. U.S.C.A. Const.Amend 14; I.C.A. § 692A.2A.

7 Cases that cite this headnote

2 Constitutional Law Vagueness

The judicial doctrine of vagueness under the due process clause requires that a criminal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. U.S.C.A. Const.Amend 14.

3 Constitutional Law Vagueness on face or as applied

A criminal statute is not vague on its face unless it is impermissibly vague in all of its applications; the possibility that an individual might be prosecuted in a particular case in a particular community despite his best efforts to comply with the restriction is not a sufficient reason to invalidate the entire statute. U.S.C.A. Const.Amend 14.

1 Case that cites this headnote

4 Constitutional Law Conduct of Police and Prosecutors in General

Due process does not require that independently elected county attorneys enforce each criminal statute with equal vigor, and the existence of different priorities or prosecution decisions among jurisdictions does not violate the Constitution. U.S.C.A. Const.Amend 14.

5 Constitutional Law Classification and registration; restrictions and obligations

Mental Health Sex offenders

Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not foreclose opportunity to be heard under due process clause of Fourteenth Amendment, although statute did not provide process for individual determinations of dangerousness; due process did not entitle any person legislatively classified as sex offender to hearing to establish fact that was not material under the state statute. U.S.C.A. Const.Amend 14; I.C.A. § 692A.2A.

4 Cases that cite this headnote

6 Constitutional Law Classification and registration; restrictions and obligations

States are not barred by principles of procedural due process from drawing classifications among sex offenders and other individuals. U.S.C.A. Const.Amend 14.

2 Cases that cite this headnote

7 Constitutional Law Classification and registration; restrictions and obligations

Mental Health Sex offenders

Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not contravene principles of procedural due process under Fourteenth Amendment, since restriction applied to all offenders who had been convicted of certain crimes against minors, regardless of what estimates of future dangerousness might have been proved in individualized hearings. U.S.C.A. Const.Amend 14; I.C.A. § 692A.2A.

13 Cases that cite this headnote

8 Constitutional Law Classification and registration; restrictions and obligations

Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not infringe upon constitutional liberty interest relating to matters of marriage and family in fashion that required heightened scrutiny; although statute restricted location of sex offender's residence, statute did not directly regulate family relationship or prevent any family member from residing with sex offender in residence in manner consistent with statute. U.S.C.A. Const.Amend 14; I.C.A. § 692A.2A.

23 Cases that cite this headnote

9 Constitutional Law Rights and interests protected; fundamental rights

Substantive due process analysis must begin with a careful description of the asserted right, for the doctrine of judicial self-restraint requires a court to exercise the utmost care whenever it is asked to break new ground in that field. U.S.C.A. Const.Amend 14.

4 Cases that cite this headnote

10 Constitutional Law Criminal Law

Constitutional Law Criminal law

Constitutional Law Classification and registration, restrictions and obligations

Mental Health Sex offenders

Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not interfere with right of sex offenders to travel under substantive due process, Privileges and Immunities Clause of Article IV and Privileges or Immunities Clause of Fourteenth Amendment, since statute did not impose any obstacle to sex offender's entry into Iowa, it did not erect actual barrier to interstate movement, and it did not treat nonresidents who visited Iowa any differently than current residents or discriminate against citizens of other states who wished to establish residence in Iowa. U S C A. Const. Art. 4, § 2, cl 2, U S C A Const.Amend 14, I C.A. § 692A.2A

7 Cases that cite this headnote

11 Constitutional Law Sex offenders

Mental Health Sex offenders

Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not implicate alleged right to intrastate travel, since statute did not prevent sex offender from entering or leaving any part of state, including areas within 2000 feet of a school or child care facility, and it did not erect any actual barrier to intrastate movement I.C A. § 692A 2A

17 Cases that cite this headnote

12 Constitutional Law Personal liberty

Mental Health Sex offenders

Sex offenders, who were subject to Iowa statute that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not show that United States Constitution established right to "live where you want" that would have required strict scrutiny of state's residency restrictions, where sex offenders did not develop any argument that right to "live where you want" was deeply rooted in nation's history and tradition or that "living where you want" was implicit in concept of ordered liberty, such that neither liberty nor justice would exist if it were sacrificed. I.C.A. § 692A.2A.

10 Cases that cite this headnote

13 Mental Health Sex offenders

Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, was rational way of promoting safety of children, although no scientific study supported legislature's conclusion that excluding sex offenders from residing within 2000 feet of school or child care facility was likely to enhance safety of children, state legislature had authority to make judgments about best means to protect health and welfare of its citizens in area where precise statistical data was unavailable and human behavior was necessarily unpredictable I C A § 692A.2A.

6 Cases that cite this headnote

14 Mental Health Sex offenders

Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, rationally advanced legitimate governmental purpose of promoting safety of children, since convicted sex offenders had distinguishing characteristics relevant to interests that state had authority to implement, Iowa General Assembly and Governor did not act based merely on negative attitudes toward, fear of, or bare desire to harm politically unpopular group, and policymakers of Iowa were institutionally equipped to set such parameters and were entitled to employ "common sense." I C.A § 692A 2A

2 Cases that cite this headnote

15 Criminal Law Compelling Self-Incrimination

Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not violate right against self-incrimination under Fifth Amendment, since statute did not require any offender to provide any information that might have been used in criminal case, although separate section of Iowa Code required sex offender to register his address with county sheriff, offenders did not challenge constitutionality of registration requirement or seek injunction against its enforcement. U.S.C.A. Const.Amends. 5, 14, I C.A. § 692A 2A

4 Cases that cite this headnote

16 Constitutional Law Sex Offenders

Mental Health Sex offenders

Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, was not retroactive criminal punishment in violation of ex post facto clause, since statute was designed to be nonpunitive and regulatory, and sex offenders could not establish by "clearest proof" that Iowa's choice was excessive in relation to its legitimate regulatory purpose given challenge in determining precisely what distance was best suited to minimize risk to children without unnecessarily restricting sex offenders and difficult policy judgments inherent in that choice U.S.C.A. Const. Art. 1, § 10, cl. 1, I.C.A. § 692A 2A.

23 Cases that cite this headnote

17 Constitutional Law Punishment in general

States are prohibited by the ex post facto clause from enacting laws that increase punishment for criminal acts after they have been committed. U.S.C.A Const. Art 1, § 10, cl 1

8 Cases that cite this headnote

18 Constitutional Law Penal laws in general

When determining whether a state statute violates the Ex Post Facto Clause, a law is necessarily punitive if the legislature intended criminal punishment; however, if the legislature intended its law to be civil and non-punitive, only the clearest proof that the law is nonetheless so punitive either in purpose or effect as to negate the state's nonpunitive intent will transform a civil regulatory measure into a criminal penalty. U.S C.A. Const. Art. 1, § 10, cl. 1

14 Cases that cite this headnote

19 Constitutional Law Punishment in general

On an Ex Post Facto Clause claim, where a legislative restriction is an incident of the state's power to protect the health and safety of its citizens, it will be considered as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment. U.S.C.A. Const. Art. 1, § 10, cl. 1

5 Cases that cite this headnote

20 Constitutional Law Purpose

Whether the regulatory scheme has a rational connection to a nonpunitive purpose is the most significant factor in the ex post facto analysis; a statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance. U.S C.A. Const. Art. 1, § 10, cl. 1

9 Cases that cite this headnote

21 Constitutional Law Power to enact

The Ex Post Facto Clause does not preclude a state from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences, and, therefore, the absence of a particularized risk assessment does not necessarily convert a regulatory law into a punitive measure. U.S.C.A. Const. Art. 1, § 10, cl. 1.

2 Cases that cite this headnote

22 Constitutional Law Constitutional Prohibitions in General

The excessiveness inquiry of ex post facto jurisprudence is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy, but rather an inquiry into whether the regulatory means chosen are reasonable in light of the nonpunitive objective. U S C A. Const. Art 1, § 10, cl 1.

3 Cases that cite this headnote

Attorneys and Law Firms

**704* Gordon Eugene Allen, argued, Des Moines, IA (Thomas J Miller, on the brief), for appellant
Philip B Mears, argued, Iowa City, IA (Randall Wilson, on the brief), for appellee.
Before RILEY, MELLOY, and COLLOTON, Circuit Judges.

Opinion

COLLOTON, Circuit Judge

In 2002, in an effort to protect children in Iowa from the risk that convicted sex offenders may reoffend in locations close to their residences, the Iowa General Assembly passed, and the Governor of Iowa signed, a bill that prohibits a person convicted of certain sex offenses involving minors from residing within 2000 feet of a school or a registered child care facility The district court declared the statute unconstitutional on several grounds and enjoined the Attorney General of Iowa and the ninety-nine county attorneys in Iowa from enforcing the prohibition.

Because we conclude that the Constitution of the United States does not prevent the State of Iowa from regulating the residency **705* of sex offenders in this manner in order to protect the health and safety of the citizens of Iowa, we reverse the judgment of the district court. We hold unanimously that the residency restriction is not unconstitutional on its face. A majority of the panel further concludes that the statute does not amount to unconstitutional *ex post facto* punishment of persons who committed offenses prior to July 1, 2002, because the appellees have not established by the "clearest proof," as required by Supreme Court precedent, that the punitive effect of the statute overrides the General Assembly's legitimate intent to enact a nonpunitive, civil regulatory measure that protects health and safety.

I.

Iowa Senate File 2197, now codified at Iowa Code § 692A.2A, took effect on July 1, 2002. It provides that persons who have been convicted of certain criminal offenses against a minor, including numerous sexual offenses involving a minor, shall not reside within 2000 feet of a school or registered child care facility. Iowa Code § 692A.2A(1)-(2). The law does not apply to persons who established a residence prior to July 1, 2002, or to schools or child care facilities that are newly located after July 1, 2002. *Id.* § 692A.2A(4)(c) Violations of the statute are punishable as aggravated misdemeanors Iowa Code § 692A.2A(3).[1]

Almost immediately after the law took effect, three named plaintiffs—sex offenders with convictions that predate the law's effective date—filed suit asserting that the statute is unconstitutional on its face. The district court certified their action as a class action, with a plaintiff class that includes all individuals to whom Iowa Code § 692A.2A applies who are currently living in Iowa or who wish to move to Iowa, except for any person who currently is the subject of a prosecution under § 692A.2A The named plaintiffs, identified as various "John Does," had committed a range of sexual crimes, including indecent exposure, "indecent liberties with a child," sexual exploitation of a minor, assault with intent to commit sexual abuse, lascivious acts with a child, and second and third degree sexual abuse, all of which brought them within the provisions of the residency restriction. A defendant class, including all **706* of Iowa's county attorneys, also was certified.

During a two-day bench trial, plaintiffs presented evidence concerning the enforcement of § 692A.2A, including maps that had been produced by several cities and counties identifying schools and child care facilities and their corresponding restricted areas. After viewing these maps and hearing testimony from a county attorney, the district court found that the restricted areas in many cities encompass the majority of

the available housing in the city, thus leaving only limited areas within city limits available for sex offenders to establish a residence In smaller towns, a single school or child care facility can cause all of the incorporated areas of the town to be off limits to sex offenders. The court found that unincorporated areas, small towns with no school or child care facility, and rural areas remained unrestricted, but that available housing in these areas is "not necessarily readily available " *Doe v Miller,* 298 F.Supp 2d 844, 851 (S D Iowa 2004).[2]

Plaintiffs also presented evidence of their individual experiences in seeking to obtain housing that complies with the 2000–foot restriction. Several of the plaintiffs, including John Does III, IV, XV, and XVIII, have friends or relatives with whom they would like to live, but whose homes are within 2000 feet of a school or child care facility. Many, such as John Does VII, X, XI, XII, XIII, XIV, and XVIII, live in homes that are currently compliant, either because they were established prior to July 1, 2002, or because the homes are outside the 2000–foot restricted areas. These plaintiffs, however, testified that they would like to be able to move into a restricted area. Still others, John Does II, VI, VIII, IX, XV, and XVI, are living in non-compliant residences that they wish to maintain.

Plaintiffs testified that in many cases they had a difficult time obtaining housing that was not within 2000 feet of a school or child care center. John Doe VII testified that he investigated 40 residences, but was unable to find any housing that would not place him in violation of § 692A.2A. The evidence also showed, however, that while the residency restriction may have exacerbated a housing problem for the plaintiffs, not all of their difficulty was caused by the statute. For example, John Doe II had difficulty finding housing in part because of his credit problems. John Doe XIV testified that the only available compliant housing in his hometown, Waterloo, was too expensive, so he and his wife purchased a rural home about 45 miles away. The mother of John Doe IV made efforts to help her son find housing, and she testified that she was able to find two potential residences for her son, but neither residence had any vacant units. John Doe VI was renting an apartment in compliance with § 692A.2A, but had to move out when the landlord decided that he did not want to rent to a sex offender Similarly, John Does VIII and XI each found at least one possible compliant apartment, but their applications were denied because of their ***707**criminal records. In apparent contrast to this testimony from the plaintiffs, Dudley Allison, a parole and probation officer, testified that while the statute made it more difficult for sex offenders to find housing, "virtually everyone" among the covered parolees and probationers whom he supervised between July 2002 and July 2003 was able to locate housing in compliance with the statute. (T Tr. at 285).

In addition to evidence regarding the burden that § 692A.2A places on sex offenders, both plaintiffs and defendants presented expert testimony about the potential effectiveness of a residency restriction in preventing offenses against minors The State presented the testimony of Mr. Allison, a parole and probation officer who specialized in sex offender supervision. Allison described the process of treating sex offenders and his efforts at preventing recidivism by identifying the triggers for the original offense, and then imposing restrictions on the residences or activities of the offender. According to Allison, restrictions on the proximity of sex offenders to schools or other facilities that might create temptation to reoffend are one way to minimize the risk of recidivism. In the parole and probation context, Allison also has authority to limit offenders' activities in more specific ways, and he testified that he attempts to remove temptation by preventing offenders from working in jobs where they would have contact with potential victims or from living near parks or other areas where children might spend time unsupervised. In addition to the limits that he imposes on offenders under his supervision, Allison also testified that there is "a legitimate public safety concern" in where unsupervised sex offenders reside In Allison's view, reoffense is "a potential danger forever "

The State also introduced the transcript of hearing testimony by Dr. William McEchron, a psychologist with a general practice that includes sex offender patients Like Allison, Dr. McEchron testified that there is no cure for sex offenders and that "there are never any guarantees that they might not reoffend " In his

view, the "biggest risk is what's going on inside the individual," but reducing the opportunity and the temptation to reoffend is extremely important to treatment He explained that because there are "very high rates of re-offense for sex offenders who had offended against children," he believed it would be appropriate to restrict places where sex offenders might come into contact with children He thought the appropriateness of such a restriction was "common sense," although he said there were insufficient data to know "where to draw the marks " Dr McEchron also testified, however, that in his view, life-long restrictions like § 692A 2A do not aid in the treatment process, and could even foster negative attitudes toward authority and depression in offenders who view the law as unfair

The plaintiffs offered the testimony of Dr Luis Rosell, a psychologist with experience in sex offender treatment. Dr Rosell estimated that the recidivism rate for sex offenders is between 20 and 25 percent, and like Allison and Dr. McEchron, stated his belief that the key to reducing the risk of recidivism is identifying the factors that led to the offender's original offense and then helping the offender to deal with or avoid those factors in the future. Dr Rosell testified that reducing a specific sex offender's access to children was a good idea, and that "if you remove the opportunity, then the likelihood of reoffense is decreased." He did not believe, however, that "residential proximity makes that big of a difference " Moreover, Dr Rosell thought that a 2000–foot limit was "extreme " Like Dr. McEchron, he worried that the law might be counterproductive ***708*** to the offender's treatment goals by causing depression and potentially removing the offender from his "support system "

After hearing the testimony of all three experts and of the individual plaintiffs, the district court declared that § 692A 2A was unconstitutional on several grounds, to wit: that it was an unconstitutional *ex post facto* law with respect to offenders who committed an offense prior to July 1, 2002; that it violated the plaintiffs' rights to avoid self-incrimination because, coupled with registration requirements elsewhere in Chapter 692A, it required offenders to report their addresses even if those addresses were not in compliance with § 692A.2A, that it violated procedural due process rights of the plaintiffs; and that it violated the plaintiffs' rights under the doctrine of substantive due process, because it infringed fundamental rights to travel and to "privately choose how they want to conduct their family affairs," and was not narrowly tailored to serve a compelling state interest Although the district court believed the law was punitive, the court rejected the plaintiffs' final argument that the law imposed cruel and unusual punishment in violation of the Eighth Amendment. Having found the statute unconstitutional, the district court issued a permanent injunction against enforcement *Doe v Miller,* 298 F.Supp 2d at 880

II

1 We first address the contention that § 692A 2A violates the rights of the covered sex offenders to due process of law under the Fourteenth Amendment. The appellees (to whom we will refer as "the Does") argue that the statute is unconstitutional because it fails to provide adequate notice of what conduct is prohibited, and because it does not require an individualized determination whether each person covered by the statute is dangerous This claim relies on what is known as "procedural due process "

2 The Due Process Clause provides that no State shall deprive any person of life, liberty, or property without due process of law The requirement of "due process" has led to the judicial doctrine of vagueness, which requires that a criminal statute "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v Lawson,* 461 U S 352, 357, 103 S.Ct. 1855, 75 L Ed.2d 903 (1983).

3,4 There is no argument here that the words of the statute are unconstitutionally vague. Rather, the Does contend that they are deprived of notice required by the Constitution because some cities in Iowa are unable to provide sex offenders with information about the location of all schools and registered child care facilities, and because it is difficult to measure the restricted areas, which are measured "as the crow

flies" from a school or child care facility. We disagree that these potential problems render the statute unconstitutional on its face. A criminal statute is not vague on its face unless it is "impermissibly vague in all of its applications," *Vill of Hoffman Estates v Flipside,* 455 U.S. 489, 497, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982), and the possibility that an individual might be prosecuted in a particular case in a particular community despite his best efforts to comply with the restriction is not a sufficient reason to invalidate the entire statute. A sex offender subject to prosecution under those circumstances may seek to establish a violation of due process through a challenge to enforcement of the statute as applied to him in a specific case. Nor do we believe that the potential for varied enforcement of the restriction, ***709** which was cited by the district court, 298 F.Supp.2d at 878, justifies invalidating the entire regulatory scheme. Due process does not require that independently elected county attorneys enforce each criminal statute with equal vigor, and the existence of different priorities or prosecution decisions among jurisdictions does not violate the Constitution.

5,6 The Does also argue that § 692A.2A unconstitutionally forecloses an "opportunity to be heard" because the statute provides no process for individual determinations of dangerousness. This argument misunderstands the right to procedural due process. As the Supreme Court recently explained in connection with a comparable challenge to Connecticut's sex offender registration law, "even assuming, *arguendo,* that [the sex offender] has been deprived of a liberty interest, due process does not entitle him to a hearing to establish a fact that is not material under the [state] statute." *Conn. Dep't of Pub. Safety v. Doe,* 538 U.S. 1, 7, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003). States "are not barred by principles of '*procedural* due process' from drawing" classifications among sex offenders and other individuals. *Id.* at 8, 123 S.Ct. 1160 (quoting *Michael H. v. Gerald D.,* 491 U.S. 110, 120, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989) (plurality opinion)) (emphasis in original).

7 We likewise conclude that the Iowa residency restriction does not contravene principles of procedural due process under the Constitution. The restriction applies to all offenders who have been convicted of certain crimes against minors, regardless of what estimates of future dangerousness might be proved in individualized hearings. Once such a legislative classification has been drawn, additional procedures are unnecessary, because the statute does not provide a potential exemption for individuals who seek to prove that they are not individually dangerous or likely to offend against neighboring schoolchildren. Unless the Does can establish that the *substantive* rule established by the legislative classification conflicts with some provision of the Constitution, there is no requirement that the State provide a process to establish an exemption from the legislative classification. *Id.* at 7–8, 123 S.Ct. 1160. Thus, the absence of an individualized hearing in connection with a statute that offers no exemptions does not offend principles of procedural due process.

III.

8 The Does also assert that the residency restriction is unconstitutional under the doctrine of substantive due process. They rely on decisions of the Supreme Court holding that certain liberty interests are so fundamental that a State may not interfere with them, even with adequate procedural due process, unless the infringement is "narrowly tailored to serve a compelling state interest." *Reno v. Flores,* 507 U.S. 292, 301–02, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993). The Does argue that several "fundamental rights" are infringed by Iowa's residency restriction, including the "right to privacy and choice in family matters," the right to travel, and "the fundamental right to live where you want." The district court agreed that § 692A.2Ainfringed upon liberty interests that constitute fundamental rights, applied strict scrutiny to the legislative classifications, and concluded that the statute was unconstitutional.

The Does first invoke "the right to personal choice regarding the family." They cite the Supreme Court's statement in *Roberts v. United States Jaycees,* 468 U.S. 609, 617–18, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984), that "certain intimate human relationships must be secured against undue intrusion by the State because of the role ***710** of such relationships in safeguarding the individual freedom that is central to

our constitutional scheme," and the Court's discussion of "marital privacy" in *Griswold v. Connecticut,* 381 U.S. 479, 485–86, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). They also rely heavily on the Court's decision in *Moore v. City of East Cleveland,* 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977), which held unconstitutional a zoning ordinance that defined "family" in such a way as to prohibit a grandmother and her two grandsons from living together in an area designated for "single family" dwellings. A plurality of the Court in *Moore* reasoned that "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment," and concluded that the governmental interests advanced by the city were insufficient to justify an ordinance that "slic[ed] deeply into the family itself." *Id.* at 498–99, 97 S.Ct. 1932 (plurality opinion). Justice Stevens concurred in the judgment on other grounds. *Id.* at 513–21, 97 S.Ct. 1932.

9 We do not believe that the residency restriction of § 692A.2A implicates any fundamental right of the Does that would trigger strict scrutiny of the statute. In evaluating this argument, it is important to consider the Supreme Court's admonition that " '[s]ubstantive due process' analysis must begin with a careful description of the asserted right, for '[t]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field.' " *Flores,* 507 U.S. at 302, 113 S.Ct. 1439 (quoting *Collins v. Harker Heights,* 503 U.S. 115, 125, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992)). While the Court has not directed that an asserted right be defined at the most specific level of tradition supporting or denying the asserted right, *cf. Michael H. v. Gerald D.,* 491 U.S. at 127 n. 6, 109 S.Ct. 2333 (1989)(opinion of Scalia, J.), the Does' characterization of a fundamental right to "personal choice regarding the family" is so general that it would trigger strict scrutiny of innumerable laws and ordinances that influence "personal choices" made by families on a daily basis. The Supreme Court's decision in *Griswold* and the plurality opinion in *Moore* did recognize unenumerated constitutional rights relating to personal choice in matters of marriage and family life, but they defined the recognized rights more narrowly, in terms of "intimate relation of husband and wife," *Griswold,* 381 U.S. at 482, 85 S.Ct. 1678, or "intrusive regulation" of "family living arrangements." *Moore,* 431 U.S. at 499, 97 S.Ct. 1932 (plurality opinion).

Unlike the precedents cited by the Does, the Iowa statute does not operate directly on the family relationship. Although the law restricts where a residence may be located, nothing in the statute limits who may live with the Does in their residences. The plurality in *Moore* emphasized this distinction, observing that the impact on family was "no mere incidental result of the ordinance," because "[o]n its face [the ordinance] selects certain categories of relatives who may live together and declares that others may not." 431 U.S. at 498–99, 97 S.Ct. 1932 (plurality opinion). Thus, the reasoning of the *Moore* plurality does not require strict scrutiny of a regulation that has an incidental or unintended effect on the family, *Hameetman v. City of Chicago,*776 F.2d 636, 643 (7th Cir.1985) (upholding requirement that firemen reside within city limits), or that "affects or encourages decisions on family matters" but does not force such choices. *Gorrie v. Bowen,* 809 F.2d 508, 523 (8th Cir.1987) (upholding regulation requiring that applications for public assistance for dependent children include siblings living in same **711* household). Similarly, the Court in *Griswold*disclaimed authority to determine "the wisdom, need, and propriety" of all laws that touch social conditions, but held unconstitutional a state statute that "operate[d] directly on an intimate relation of husband and wife." 381 U.S. at 482, 85 S.Ct. 1678.

While there was evidence that one adult sex offender in Iowa would not reside with his parents as a result of the residency restriction, that another sex offender and his wife moved 45 miles away from their preferred location due to the statute, and that a third sex offender could not reside with his adult child in a restricted zone, the statute does not directly regulate the family relationship or prevent any family member from residing with a sex offender in a residence that is consistent with the statute. We therefore hold that § 692A.2A does not infringe upon a constitutional liberty interest relating to matters of marriage and family in a fashion that requires heightened scrutiny.

10 The Does also assert that the residency restrictions interfere with their constitutional right to travel The modern Supreme Court has recognized a right to interstate travel in several decisions, beginning with *United States v Guest,* 383 U S 745, 757–58, 86 S Ct 1170, 16 L Ed.2d 239 (1966), and *Shapiro v Thompson,* 394 U.S. 618, 629–30, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). The Court subsequently explained that the federal guarantee of interstate travel "protects interstate travelers against two sets of burdens 'the erection of actual barriers to interstate movement' and 'being treated differently' from intrastate travelers." *Bray v Alexandria Women's Health Clinic,* 506 U.S. 263, 277, 113 S.Ct. 753, 122 L.Ed.2d 34 (1993) (quoting *Zobel v Williams,* 457 U.S. 55, 60 n 6, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982)). Most recently, the Court summarized that the right to interstate travel embraces at least three different components: "the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." *Saenz v Roe,* 526 U.S. 489, 500, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999)

Although the district court, like some other courts, considered the first component of a right to interstate travel under the rubric of "substantive due process," the Supreme Court has not identified the textual source of that component. The Court has observed that the Articles of Confederation provided that "the people of each State shall have free ingress and regress to and from any other State," and suggested that this right "may simply have been 'conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created ' " *Id* at 501 & n. 3, 119 S.Ct. 1518(quoting *Guest,* 383 U.S. at 758, 86 S.Ct 1170). The latter two components of the right identified in *Saenz* arise from the Privileges and Immunities Clause of Article IV, § 2, and the Privileges or Immunities Clause of the Fourteenth Amendment. *Id*

The Does argue that § 692A.2A violates this right to interstate travel by substantially limiting the ability of sex offenders to establish residences in any town or urban area in Iowa. They contend that the constitutional right to travel is implicated because the Iowa law deters previously convicted sex offenders from migrating from other States to Iowa. The district court agreed, reasoning that the statute "effectively bans sex offenders from residing in large sections of Iowa's towns and cities." 298 F.Supp.2d at 874.

**712* We respectfully disagree with this analysis. The Iowa statute imposes no obstacle to a sex offender's entry into Iowa, and it does not erect an "actual barrier to interstate movement." *Bray,* 506 U.S. at 277, 113 S.Ct. 753 (internal quotation omitted). There is "free ingress and regress to and from" Iowa for sex offenders, and the statute thus does not "directly impair the exercise of the right to free interstate movement " *Saenz,* 526 U.S. at 501, 119 S.Ct. 1518. Nor does the Iowa statute violate principles of equality by treating nonresidents who visit Iowa any differently than current residents, or by discriminating against citizens of other States who wish to establish residence in Iowa. We think that to recognize a fundamental right to interstate travel in a situation that does not involve any of these circumstances would extend the doctrine beyond the Supreme Court's pronouncements in this area. That the statute may deter some out-of-state residents from traveling to Iowa because the prospects for a convenient and affordable residence are less promising than elsewhere does not implicate a fundamental right recognized by the Court's right to travel jurisprudence.[3]

11 The Does also assert that § 692A 2A infringes upon a fundamental constitutional right to *intra* state travel. The Supreme Court has not decided whether there is a fundamental right to intrastate travel, *see Memorial Hosp v Maricopa County,* 415 U.S. 250, 255–56, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974), although it observed long ago that under the Articles of Confederation, state citizens "possessed the fundamental right, inherent in citizens of all free governments, peacefully to dwell within the limits of their respective states, to move at will from place to place therein, and to have free ingress thereto and egress therefrom " *United States v Wheeler,* 254 U S 281, 293, 41 S.Ct 133, 65 L Ed. 270 (1920).

During the same era, the Court also commented that "the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty ... secured by the 14th Amendment," *Williams v Fears,* 179 U S 270, 274, 21 S.Ct 128, 45 L.Ed. 186 (1900), but as the Third Circuit observed, "[i]t is unclear whether the travel aspect of cases like *Fears* can be severed from the general spirit of *Lochner v New York,* 198 U.S. 45, 25 S Ct. 539, 49 L.Ed 937 (1905), now thoroughly discredited, that was so prominent in the substantive due process analysis of that period." *Lutz v City of York,* 899 F.2d 255, 266 (3d Cir.1990)

Some of our sister circuits have recognized a fundamental right to intrastate **713*travel in the context of a "drug exclusion zone" that banned persons from an area of a city for a period of time, *Johnson v City of Cincinnati,* 310 F.3d 484, 496–98 (6th Cir.2002), an ordinance that outlawed "cruising" and thus limited the ability of persons to drive on certain major public roads, *Lutz,* 899 F.2d at 268, and a law that created a durational residency requirement as a condition of eligibility for public housing. *King v New Rochelle Mun. Hous Auth.,* 442 F.2d 646, 647–48 (2d Cir.1971). The Second Circuit, for example, reasoned that it would be "meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state." *Id.* at 648; *see also Johnson,* 310 F.3d at 497 n. 4; *Lutz,* 899 F.2d at 261. Other decisions have held that there is *no* fundamental right to intrastate travel in the context of a bona fide residency requirement imposed as a condition of municipal employment. *Andre v Bd of Trs of Maywood,* 561 F.2d 48, 52–53 (7th Cir.1977); *Wardwell v Bd. of Educ ,* 529 F.2d 625, 627 (6th Cir.1976); *Wright v. City of Jackson,* 506 F.2d 900, 901–02 (5th Cir.1975), *see also Doe v City of Lafayette,* 377 F.3d 757, 770–71 (7th Cir.2004) (en banc) (holding that city's ban of sex offender from all public parks did not implicate fundamental right to intrastate travel, where offender was "not limited in moving from place to place within his locality to socialize with friends and family, to participate in gainful employment or to go to the market to buy food and clothing"); *Hutchins v District of Columbia,* 188 F.3d 531, 538–39 (D.C.Cir.1999) (en banc) (holding that there is no fundamental right for juveniles to be in a public place without adult supervision during curfew hours).

We find it unnecessary in this case to decide whether there is a fundamental right to intrastate travel under the Constitution, because assuming such a right is recognized, it would not require strict scrutiny of § 692A.2A. The district court and the Does cite the Sixth Circuit's decision in *Johnson* for the proposition that there is a fundamental right to intrastate travel Accepting that view for purposes of analysis, we believe that any fundamental right to intrastate travel would likely be "correlative" to the right to interstate travel discussed in *Saenz, see Johnson,* 310 F.3d at 497 n. 4, or would consist of a "right to travel locally through public spaces and roadways." *Id* at 498.Therefore, the Iowa statute would not implicate a right to intrastate travel for the same reasons that it does not implicate the right to interstate travel. The Iowa residency restriction does not prevent a sex offender from entering or leaving any part of the State, including areas within 2000 feet of a school or child care facility, and it does not erect any actual barrier to intrastate movement. In this sense, the Iowa law is comparable to the municipal residency requirements that have been held to implicate no fundamental right to intrastate travel in *Andre, Wardwell* and *Wright,* and less restrictive on freedom of movement than the ban on access to public parks upheld under rational basis review in *Doe v City of Lafayette* By contrast, the decisions finding infringement of a fundamental right to intrastate travel have involved laws that trigger concerns not present here—interference with free ingress to and egress from certain parts of a State (*Johnson* and *Lutz*) or treatment of new residents of a locality less favorably than existing residents (*King*).

12 The Does also urge that we recognize a fundamental right "to live where you want." This ambitious articulation of a proposed unenumerated right calls to mind the Supreme Court's caution that we should proceed with restraint in the area **714* of substantive due process, because "[b]y extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena

of public debate and legislative action " *Washington v. Glucksberg,* 521 U.S 702, 720, 117 S.Ct. 2258, 138 L Ed.2d 772 (1997) Some thirty years ago, our court said "we cannot agree that the right to choose one's place of residence is necessarily a fundamental right," *Prostrollo v Univ of S D ,* 507 F.2d 775, 781 (8th Cir 1974), and we see no basis to conclude that the contention has gained strength in the intervening years. The Supreme Court recently has restated its reluctance to "expand the concept of substantive due process because guideposts for responsible decisionmaking in this uncharted area are scarce and open-ended," *Glucksberg,* 521 U S. at 720, 117 S Ct. 2258 (quoting *Collins,* 503 U.S. at 125, 112 S.Ct. 1061), and the Does have not developed any argument that the right to "live where you want" is "deeply rooted in this Nation's history and tradition," *id.* at 721, 117 S Ct. 2258 (quoting *Moore,* 431 U.S. at 503, 97 S.Ct. 1932 (plurality opinion)) or "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if [it] were sacrificed " *Id* (quoting *Palko v Connecticut,* 302 U.S. 319, 325, 326, 58 S.Ct. 149, 82 L Ed. 288 (1937)). We are thus not persuaded that the Constitution establishes a right to "live where you want" that requires strict scrutiny of a State's residency restrictions

13 Because § 692A.2A does not implicate a constitutional liberty interest that has been elevated to the status of "fundamental right," we review the statute to determine whether it meets the standard of "rationally advancing some legitimate governmental purpose." *Flores,* 507 U.S. at 306, 113 S Ct. 1439. The Does acknowledge that the statute was designed to promote the safety of children, and they concede that this is a legitimate state interest They also allow that perhaps "certain identifiable sex offenders should not live right across the street from a school or perhaps anywhere else where there are children." (Appellees' Br. at 51). The Does contend, however, that the statute is irrational because there is no scientific study that supports the legislature's conclusion that excluding sex offenders from residing within 2000 feet of a school or child care facility is likely to enhance the safety of children.

We reject this contention because we think it understates the authority of a state legislature to make judgments about the best means to protect the health and welfare of its citizens in an area where precise statistical data is unavailable and human behavior is necessarily unpredictable. Although the Does introduced one report from the Minnesota Department of Corrections finding "no evidence in Minnesota that residential proximity of sex offenders to schools or parks affects reoffense," this solitary case study—which involved only thirteen reoffenders released from prison between 1997 and 1999—does not make irrational the decision of the Iowa General Assembly and the Governor of Iowa to reach a different predictive judgment for Iowa. As the district court observed, twelve other States have enacted some form of residency restriction applicable to sex offenders.[4] There can be ***715** no doubt of a legislature's rationality in believing that "[s]ex offenders are a serious threat in this Nation," and that "[w]hen convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault." *Conn. Dep't of Pub Safety,* 538 U.S. at 4, 123 S.Ct. 1160 (alterations in original) (quoting *McKune v Lile,* 536 U.S. 24, 32–33, 122 S.Ct. 2017, 153 L Ed.2d 47 (2002) (plurality opinion)). The only question remaining is whether, in view of a rationally perceived risk, the chosen residency restriction rationally advances the State's interest in protecting children

14 We think the decision whether to set a limit on proximity of "across the street" (as appellees suggest), or 500 feet or 3000 feet (as the Iowa Senate considered and rejected, *see* S. Journal 79, 2d Sess., at 521 (Iowa 2002)), or 2000 feet (as the Iowa General Assembly and the Governor eventually adopted) is the sort of task for which the elected policymaking officials of a State, and not the federal courts, are properly suited. The legislature is institutionally equipped to weigh the benefits and burdens of various distances, and to reconsider its initial decision in light of experience and data accumulated over time. The State of Alabama, for example, originally adopted a residency restriction of 1000 feet, but later increased the distance to 2000 feet, Ala.Code § 15–20–26(a); *see also* 2000 Ala. Acts 728, § 1; 1999 Ala. Acts 572, § 3, while the Minnesota legislature apparently followed the recommendation of the State's Department of Corrections that no blanket proximity restriction should be adopted. (Appellee's App at 338). Where individuals in a group, such as convicted sex offenders, have "distinguishing ***716** characteristics relevant

to interests the State has authority to implement, the courts have been very reluctant, as they should be in our federal system and with our respect for the separation of powers, to closely scrutinize legislative choices as to whether, how, and to what extent those interests should be pursued." *City of Cleburne v Cleburne Living Ctr*, 473 U.S. 432, 441–42, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985)

The record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward, fear of, or a bare desire to harm a politically unpopular group. *Cf Cleburne*, 473 U.S. at 448, 105 S.Ct. 3249; *Dep't of Agric v. Moreno*, 413 U.S. 528, 534, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973) Sex offenders have a high rate of recidivism, and the parties presented expert testimony that reducing opportunity and temptation is important to minimizing the risk of reoffense. Even experts in the field could not predict with confidence whether a particular sex offender will reoffend, whether an offender convicted of an offense against a teenager will be among those who "cross over" to offend against a younger child, or the degree to which regular proximity to a place where children are located enhances the risk of reoffense against children. One expert in the district court opined that it is just "common sense" that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense. (Appellant's App at 165). The policymakers of Iowa are entitled to employ such "common sense," and we are not persuaded that the means selected to pursue the State's legitimate interest are without rational basis.

IV.

15 The Does next argue that the residency restriction, "in combination with" the sex offender registration requirements of § 692A.2, unconstitutionally compels sex offenders to incriminate themselves in violation of the Fifth and Fourteenth Amendments. The district court concluded that a sex offender who establishes residence in a prohibited area must either register his current address, thereby "explicitly admit[ting] the facts necessary to prove the criminal act," or "refuse to register and be similarly prosecuted " 298 F.Supp.2d at 879. The court then held that § 692A.2A "unconstitutionally requires sex offenders to provide incriminating evidence against themselves," and enjoined enforcement of the residency restriction on this basis as well.

We disagree that the Self–Incrimination Clause of the Fifth Amendment renders the residency restriction of § 692A.2A unconstitutional. Our reason is straightforward: the residency restriction does not compel a sex offender to be a witness against himself or a witness of any kind. The statute regulates only where the sex offender may reside; it does not require him to provide any information that might be used against him in a criminal case. A *separate* section of the Iowa Code, § 692A.2, requires a sex offender to register his address with the county sheriff. The Does have not challenged the constitutionality of the registration requirement, or sought an injunction against its enforcement, and whatever constitutional problem may be posed by the registration provision does not justify invalidating the residency restriction.

None of the authorities cited by the Does supports invalidation of a substantive rule of law because a reporting or registration requirement allegedly compels a person in violation of that substantive rule to incriminate himself. The Supreme Court held in **717 Marchetti v United States*, 390 U.S. 39, 88 S.Ct. 697, 19 L.Ed.2d 889 (1968), and *Grosso v. United States*, 390 U.S. 62, 88 S.Ct. 709, 19 L.Ed.2d 906 (1968), that a gambler was privileged under the Fifth Amendment not to register his occupation as one in the business of accepting wagers, not to pay the required occupational tax, and not to pay a wagering excise tax, because these submissions would create a real and appreciable hazard of self-incrimination for the gambler The Court never suggested, however, that the Self–Incrimination Clause prevented the government from criminalizing wagering or gambling. Similarly, in *Leary v. United States*, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969), the Court's holding that a plea of self-incrimination was a complete defense in a prosecution for non-compliance with provisions requiring payment of a tax on marijuana imported into the United States did not imply that state laws prohibiting the possession of marijuana were somehow unconstitutional. *Id.* at 29, 89 S.Ct. 1532. And in *Albertson v Subversive Activities Control*

Board, 382 U.S. 70, 86 S.Ct. 194, 15 L.Ed.2d 165 (1965), where the Court held unconstitutional under the Fifth Amendment a requirement that members of the Communist Party file a registration statement with the Attorney General, it was never intimated that the registration requirement rendered unconstitutional Section 4(a) of the Subversive Activities Control Act, under which Albertson might have been prosecuted as a result of the registration.

Even had the Does challenged the sex offender registration statute, moreover, we believe that a self-incrimination challenge to the registration requirements would not be ripe for decision. Unlike *Albertson,* where the petitioners had asserted the privilege against self-incrimination on multiple occasions, the Attorney General of the United States had rejected their claims, and specific orders requiring the petitioners to register had been issued, 382 U.S. at 75, 86 S.Ct. 194, the process with respect to enforcement of the Iowa sex offender registration statute in conjunction with the residency restriction is far less developed. The record does not show whether any of the plaintiffs has registered with the county sheriff an address that is prohibited by § 692A.2A, whether any of the county attorneys or the Attorney General would seek to use registration information to further a criminal prosecution for violation of the residency restriction (rather than merely as a regulatory mechanism to bring sex offenders into compliance with the statute),[5] or whether the prosecuting authorities would recognize a refusal to register as a valid assertion of the privilege against self-incrimination (and thus decline to prosecute a sex offender for failing to register a prohibited residence).

We think that under these circumstances, a self-incrimination challenge to the registration statute would be premature. *See Communist Party v. Subversive Activities Control Bd.,* 367 U.S. 1, 106–10, 81 S.Ct. 1357, 6 L.Ed.2d 625 (1961); *cf Selective Serv. Sys. v. Minn. Pub. Interest Research Group,* 468 U.S. 841, 858, 104 S.Ct. 3348, 82 L.Ed.2d 632 (1984). If and when there is a prosecution for violation of the residency restriction in which the prosecution makes use of a sex offender's registration, a prosecution for failure to register a prohibited address, or some other basis such as in *Albertson* to say that the **718* dispute is ripe, then the self-incrimination issue will be joined. It would then be appropriate to consider such questions as whether the registration requirement as applied falls under the rule of cases such as *Marchetti* and *Albertson,* where the Fifth Amendment was held to prohibit incriminating registration or reporting requirements directed at persons "inherently suspect of criminal activities," *Albertson,* 382 U.S. at 79, 86 S.Ct. 194, or whether the public need for information about convicted sex offenders and the noncriminal regulatory purpose for securing the information might permit enforcement of the requirement consistent with the Fifth Amendment. *Cf. Baltimore City Dep't of Soc. Servs. v. Bouknight,* 493 U.S. 549, 557–59, 110 S.Ct. 900, 107 L.Ed.2d 992 (1990); *California v. Byers,* 402 U.S. 424, 431–34, 91 S.Ct. 1535, 29 L.Ed.2d 9 (1971) (plurality opinion); *id.* at 457–58, 91 S.Ct. 1535 (Harlan, J., concurring in the judgment). At this point, we conclude that the Does' self-incrimination claim is both misdirected and premature.

V.

16,17,18 A final, and narrower, challenge advanced by the Does is that § 692A.2A is an unconstitutional *ex post facto* law because it imposes retroactive punishment on those who committed a sex offense prior to July 1, 2002. The *Ex Post Facto* Clause of Article I, Section 10 of the Constitution prohibits the States from enacting laws that increase punishment for criminal acts after they have been committed. *See generally Calder v. Bull,* 3 U.S. 386, 390, 3 Dall. 386, 1 L.Ed. 648 (1798) (Chase, J., seriatim). In determining whether a state statute violates the *Ex Post Facto* Clause by imposing such punishment, we apply the framework outlined in *Smith v. Doe,* 538 U.S. 84, 92, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003), where the Supreme Court considered an *ex post facto* challenge to an Alaska statute requiring sex offenders to register. Under that framework, we must first "ascertain whether the legislature meant the statute to establish 'civil' proceedings." *Id.* (internal quotation omitted). If the legislature intended criminal punishment, then the legislative intent controls the inquiry and the law is necessarily punitive. *Id.* If, however, the legislature intended its law to be civil and nonpunitive, then we must determine whether the law is nonetheless "so punitive either in purpose or effect as to negate" the

State's nonpunitive intent. *Id* (internal quotations and citations omitted) "[O]nly the clearest proof" will transform what the legislature has denominated a civil regulatory measure into a criminal penalty *Id*

19 The district court found that in passing the residency restriction of § 692A 2A, the Iowa General Assembly intended to create "a civil, non-punitive statutory scheme to protect the public " 298 F Supp 2d at 868. The Does do not dispute this conclusion on appeal, and we agree that the legislature's intent was not punitive Although Iowa Code § 692A 2A does not contain any clear statement of purpose, the residency restriction is codified as part of Chapter 692A, together with a registration system that the Supreme Court of Iowa has declared to have a purpose of "protect[ing] society" and to be a nonpunitive, regulatory law *In Interest of S M M.*, 558 N W 2d 405, 408 (Iowa 1997), *State v Pickens*, 558 N W 2d 396, 400 (Iowa 1997) "[W]here a legislative restriction is an incident of the State's power to protect the health and safety of its citizens, it will be considered as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment." *Smith v Doe*, 538 U.S at 93–94, 123 S Ct. 1140 (quoting **719 Flemming v Nestor*, 363 U S. 603, 616, 80 S.Ct. 1367, 4 L.Ed.2d 1435 (1960)) (internal marks omitted) We believe the available evidence leads most naturally to the inference that the restrictions in § 692A.2A are intended, like the restrictions elsewhere in the same chapter, to protect the health and safety of Iowa citizens Therefore, we conclude that the purpose of the Iowa General Assembly in passing this law was regulatory and non-punitive

We must next consider whether the Does have established that the law was nonetheless so punitive in effect as to negate the legislature's intent to create a civil, non-punitive regulatory scheme In this inquiry, we refer to what the Supreme Court described in *Smith v Doe* as "useful guideposts" for determining whether a law has a punitive effect In analyzing the effect of the Alaska sex offender registration law, the Court in *Smith* pointed to five factors drawn from *Kennedy v Mendoza–Martinez*, 372 U S. 144, 168–69, 83 S.Ct. 554, 9 L Ed.2d 644 (1963), as particularly relevant whether the law has been regarded in our history and traditions as punishment, whether it promotes the traditional aims of punishment, whether it imposes an affirmative disability or restraint, whether it has a rational connection to a nonpunitive purpose, and whether it is excessive with respect to that purpose *Smith v Doe*, 538 U.S. at 97, 123 S.Ct. 1140. These factors are "neither exhaustive nor dispositive," *id.* (quotation omitted), and while we consider them as an aid to our analysis, we bear in mind that the ultimate question always remains whether the punitive effects of the law are so severe as to constitute the "clearest proof" that a statute intended by the legislature to be nonpunitive and regulatory should nonetheless be deemed to impose *ex post facto* punishment.

Turning first to any historical tradition regarding residency restrictions, the Does argue that § 692A.2A is the effective equivalent of banishment, which has been regarded historically as a punishment. *See Smith v Doe*, 538 U.S at 98, 123 S.Ct 1140 Banishment has been defined as " 'punishment inflicted on criminals by compelling them to quit a city, place, or country for a specified period of time, or for life,' " *United States v Ju Toy*, 198 U S 253, 269–70, 25 S.Ct 644, 49 L.Ed. 1040 (1905) (Brewer, J , dissenting) (quoting *Black's Law Dictionary*), or "expulsion from a country." *Black's Law Dictionary* 154, 614 (8th ed.2004). The Supreme Court most recently explained that banished offenders historically could not "return to their original community," and that the banishment of an offender "expelled him from the community " *Smith v Doe*, 538 U S at 98, 123 S Ct. 1140, *see also Fong Yue Ting v United States*, 149 U S 698, 730, 13 S.Ct. 1016, 37 L Ed. 905 (1893) (holding that order of deportation is "not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment")

While banishment of course involves an extreme form of residency restriction, we ultimately do not accept the analogy between the traditional means of punishment and the Iowa statute Unlike banishment, § 692A 2A restricts only where offenders may reside It does not "expel" the offenders from their communities or prohibit them from accessing areas near schools or child care facilities for

employment, to conduct commercial transactions, or for any purpose other than establishing a residence With respect to many offenders, the statute does not even require a change of residence· the Iowa General Assembly included a grandfather provision that permits sex offenders to maintain a residence that was established prior to July 1, 2002, even if that residence is within 2000 feet of a school or child care facility. *720 Iowa Code § 692A.2A(4)(c). The district court, moreover, found that residency restrictions for sex offenders "are relatively new and somewhat unique," 298 F.Supp.2d at 849 n. 4, and as with sex offender registration laws, which also were of "fairly recent origin," *Smith v Doe,* 538 U S at 97, 123 S.Ct. 1140 (internal quotation omitted), this novelty "suggests that the statute was not meant as a punitive measure, or, at least, that it did not involve a traditional means of punishing." *Id.* We thus conclude that this law is unlike banishment in important respects, and we do not believe it is of a type that is traditionally punitive.

The second factor that we consider is whether the law promotes the traditional aims of punishment—deterrence and retribution. *Smith v Doe,* 538 U.S. at 102, 123 S Ct 1140. The district court found that the law was both deterrent and retributive, and thus weighed this factor in favor of its finding that the law was punitive. We agree with the district court that the law could have a deterrent effect, but we do not agree that the deterrent effect provides a strong inference that the restriction is punishment. The primary purpose of the law is not to alter the offender's incentive structure by demonstrating the negative consequences that will flow from committing a sex offense The Iowa statute is designed to reduce the likelihood of reoffense by limiting the offender's temptation and reducing the opportunity to commit a new crime. We observe, moreover, that the Supreme Court has cautioned that this factor not be over-emphasized, for it can "prove[ ] too much," as "[a]ny number of governmental programs might deter crime without imposing punishment " *Id*

The statute's "retributive" effect is similarly difficult to evaluate For example, while the Ninth Circuit found punishment where the length of sex offender reporting requirements corresponded to the degree of wrongdoing rather than the extent of the risk imposed, *Doe I v Otte,* 259 F.3d 979, 990 (9th Cir.2001), *rev'd sub nom Smith v. Doe,* 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003), the Supreme Court disagreed, and instead emphasized that the reporting requirements were "reasonably related to the danger of recidivism" in a way that was "consistent with the regulatory objective " *Smith v Doe,* 538 U.S. at 102, 123 S.Ct. 1140. While any restraint or requirement imposed on those who commit crimes is at least potentially retributive in effect, we believe that § 692A.2A, like the registration requirement in *Smith v Doe,* is consistent with the legislature's regulatory objective of protecting the health and safety of children.

The next factor we consider is whether the law "imposes an affirmative disability or restraint." Imprisonment is the "paradigmatic" affirmative disability or restraint, *Smith v Doe,* 538 U.S. at 100, 123 S.Ct 1140, but other restraints, such as probation or occupational debarment, also can impose some restriction on a person's activities. *Id* at 100–01, 123 S.Ct. 1140. While restrictive laws are not necessarily punitive, they are more likely to be so; by contrast, "[i]f the disability or restraint is minor and indirect, its effects are unlikely to be punitive." *Id.* at 100, 123 S.Ct. 1140. For example, sex offender registration laws, requiring only periodic reporting and updating of personal information, do not have a punitive restraining effect *Id* at 102, 123 S Ct. 1140. At the same time, civil commitment of the mentally ill, though extremely restrictive and disabling to those who are committed, does not necessarily impose punishment because it bears a reasonable relationship to a "legitimate nonpunitive objective," namely protecting the public from mentally unstable *721 individuals *Hendricks,* 521 U.S. at 363, 117 S.Ct. 2072.

Iowa Code § 692A 2A is more disabling than the sex offender registration law at issue in *Smith v Doe,* which had not "led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred through the use of routine background checks by employers and

landlords." 538 U S at 100, 123 S Ct. 1140 Although the Does did not present much evidence about housing within restricted areas that would have been available to them absent the statute, they did show that some sex offenders would have lived with spouses or parents who owned property in the restricted zones, and some sex offenders were living in residences within restricted areas that were permitted under the statute's "grandfather" provision The residency restriction is certainly less disabling, however, than the civil commitment scheme at issue in *Hendricks,* which permitted complete confinement of affected persons In both *Smith* and *Hendricks,* the Court considered the degree of the restraint involved in light of the legislature's countervailing nonpunitive purpose, and the Court in *Hendricks* emphasized that the imposition of an affirmative restraint "does not inexorably lead to the conclusion that the government has imposed punishment." 521 U S at 363, 117 S Ct. 2072 (internal quotation omitted) Likewise here, while we agree with the Does that § 692A 2A does impose an element of affirmative disability or restraint, we believe this factor ultimately points us to the importance of the next inquiry whether the law is rationally connected to a nonpunitive purpose, and whether it is excessive in relation to that purpose.

20 This final factor—whether the regulatory scheme has a "rational connection to a nonpunitive purpose"—is the "most significant factor" in the *ex post facto* analysis *Smith v Doe,* 538 U.S at 102, 123 S Ct 1140 The requirement of a "rational connection" is not demanding A "statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance " *Id* at 103, 123 S Ct. 1140 The district court found "no doubt" that § 692A.2A has a purpose other than punishing sex offenders, 298 F Supp 2d at 870, and we agree In light of the high risk of recidivism posed by sex offenders, *see Smith v Doe,* 538 U.S. at 103, 123 S.Ct. 1140, the legislature reasonably could conclude that § 692A.2A would protect society by minimizing the risk of repeated sex offenses against minors

21 The district court nonetheless concluded that the statute is excessive in relation to this purpose, because the law applies "regardless of whether a particular offender is a danger to the public " 298 F.Supp 2d at 871. The absence of a particularized risk assessment, however, does not necessarily convert a regulatory law into a punitive measure, for "[t]he *Ex Post Facto* Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences " *Smith v Doe,* 538 U.S. at 103, 123 S.Ct. 1140.The Supreme Court over the years has held that restrictions on several classes of offenders are nonpunitive, despite the absence of particularized determinations, including laws prohibiting the practice of medicine by convicted felons, *Hawker v New York,* 170 U.S. 189, 197, 18 S Ct. 573, 42 L.Ed 1002 (1898), laws prohibiting convicted felons from serving as officers or agents of a union, *De Veau v Braisted,*363 U S 144, 160, 80 S.Ct 1146, 4 L Ed 2d 1109 (1960) (plurality opinion), *id* at 160–61, 80 S.Ct 1146 (opinion of Brennan, J.), and of course laws ***722** requiring the registration of sex offenders *Smith v Doe,* 538 U.S at 106, 123 S Ct. 1140

In this case, we conclude that a categorical rule is consistent with the legislature's regulatory purpose and not "excessive" within the meaning of the Supreme Court's decisions While the Does argue that the legislature must tailor restrictions to the individual circumstances of different sex offenders, we view this position as inconsistent with the Supreme Court's direction that the "excessiveness" prong of the *ex post facto* analysis does not require a "close or perfect fit" between the legislature's nonpunitive purpose and the corresponding regulation The evidence presented at trial suggested that convicted sex offenders as a class were more likely to commit sex offenses against minors than the general population. Dr McEchron indicated that "there are never any guarantees that [sex offenders] won't reoffend," (Appellant's App at 162), and Mr Allison testified that "any sex offender is always going to be of some concern forever " (T Tr at 279)

More specifically, in Allison's view, even an offender who committed a crime involving an older victim, such as statutory rape, would be of concern around a day care or elementary school, although the concern

may be reduced, (T Tr at 278), and Dr Rosell testified that while he believed that a sex offender who committed an offense with a 14 or 15–year–old victim was likely to stay in that age range, there also was no way to predict whether a sex offender would "cross over" in selecting victims from adults to children or males to females (Appellee's App at 149, 184). Dr Rosell was less than definitive about the degree to which sex offenders' future behavior was predictable and avoidable; while he personally did not believe residential proximity made "that big of a difference," he agreed that "what works in criminal justice is imprecise at best," and testified that "[t]here is always a risk" of reoffense. (Appellee's App. at 193, 195, 190). In view of the higher-than-average risk of reoffense posed by convicted sex offenders, and the imprecision involved in predicting what measures will best prevent recidivism, we do not believe the Does have established that Iowa's decision to restrict all such offenders from residing near schools and child care facilities constitutes punishment despite the legislature's regulatory purpose.

22 The Does also urge that the law is excessive in relation to its regulatory purpose because there is no scientific evidence that a 2000–foot residency restriction is effective at preventing sex offender recidivism. "The excessiveness inquiry of our *ex post facto* jurisprudence is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy," but rather an inquiry into "whether the regulatory means chosen are reasonable in light of the nonpunitive objective " *Smith v Doe,* 538 U.S. at 105, 123 S.Ct. 1140. In this case, there was expert testimony that reducing the frequency of contact between sex offenders and children is likely to reduce temptation and opportunity, which in turn is important to reducing the risk of reoffense. None of the witnesses was able to articulate a precise distance that optimally balanced the benefit of reducing risk to children with the burden of the residency restrictions on sex offenders, and the Does' expert acknowledged that "[t]here is nothing in the literature that has addressed proximity." (Appellee's App. 198; *accord id.* at 41, 47–48 (testimony of Dr. McEchron)) As even Dr. Rosell admitted, we just "don't know" that the Iowa Legislature "isn't ahead of the curve." (*Id.* at 198).

**723* We believe the legislature's decision to select a 2000–foot restriction, as opposed to the other distances that were considered and rejected, is reasonably related to its regulatory purpose. Given the challenge in determining precisely what distance is best suited to minimize risk to children without unnecessarily restricting sex offenders, and the difficult policy judgments inherent in that choice, we conclude that the Does have not established the "clearest proof" that Iowa's choice is excessive in relation to its legitimate regulatory purpose, such that a statute designed to be nonpunitive and regulatory should be considered retroactive criminal punishment.[6]

The judgment of the district court is reversed, and the case is remanded with directions to enter judgment in favor of the defendants

MELLOY, Circuit Judge, concurring and dissenting
I join in the majority's opinion, sections I through IV. However, I dissent as to section V because I believe section 692A.2A is an unconstitutional ex post facto law.

The U.S. Constitution prohibits states from passing ex post facto laws U S. Const. art I, § 10, cl. 1. " 'Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed,' " is an ex post facto law. *Stogner v California,* 539 U.S. 607, 612, 123 S.Ct. 2446, 156 L.Ed.2d 544 (2003) (quoting *Calder v Bull,* 3 U S 386, 390, 3 Dall 386, 1 L.Ed. 648 (1798))

As set out by the majority, the fundamental question the Court must decide is whether the residency requirement amounts to punishment. We do so by first asking whether the legislature intended the statute to be punitive If the answer is in the affirmative, that ends our inquiry, and we find the legislation to be an ex post facto law. However, if the legislature intended the statute to be nonpunitive, "we must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate the State's

intention to deem it civil " *Smith v Doe,* 538 U S. 84, 92, 123 S.Ct. 1140, 155 L Ed 2d 164 (2003) (internal quotations and citation omitted). I agree with the majority that the purpose of section 692A 2A is to protect the public. This purpose is nonpunitive, so we must determine if the statute "is so punitive either in purpose or effect as to negate the State's intention to deem it civil." *Id.*

I also agree with the majority that the factors outlined in *Smith* should guide our analysis However, I part ways with the majority as to how some of the individual factors should be examined and as to the final outcome of the multi-factor analysis.

1. Have measures like the residency restriction historically been regarded as punishment?

The majority concedes that banishment has historically been regarded as punishment, ***724*** but points out how the residency restriction differs from banishment. The majority concludes that section 692A.2A is not the type of law that has historically been regarded as punishment. I would find that, although section 692A.2A does not amount to full banishment, it sufficiently resembles banishment to make this factor weigh towards finding the law punitive.

The district court made the following factual findings on the availability of housing:

> [S]ex offenders are completely banned from living in a number of Iowa's small towns and cities In the state's major communities, offenders are relegated to living in industrial areas, in some of the cities' most expensive developments, or on the very outskirts of town where available housing is limited. Although some areas are completely unrestricted, these are either very small towns without any services, or farmland.

* * * * * *

> In larger cities such as Des Moines and Iowa City, the maps show that the two thousand foot circles cover virtually the entire city area. The few areas in Des Moines, for instance, which are not restricted, include only industrial areas or some of the city's newest and most expensive neighborhoods. In smaller towns that have a school or childcare facility, the entire town is often engulfed by the excluded area. In Johnson County alone, the towns of Lone Tree, North Liberty, Oxford, Shueyville, Solon, Swisher and Tiffin are wholly restricted to sex offenders under § 692A.2A. Unincorporated areas and towns too small to have a school or childcare facility remain available, as does the country, but available housing in those areas is not necessarily readily available.

These findings are not clearly erroneous and should therefore be upheld. *See*Fed.R.Civ.P. 52(a). In its findings, the district court demonstrated how difficult it is for sex offenders to find legal housing in many communities in Iowa due to the housing restriction. It is common that offenders may not return to live in the community they lived in before incarceration, the place where their families live, and/or the place they find work. There are so few legal housing options that many offenders face the choice of living in rural areas or leaving the state The difficulty in finding proper housing effectively prevents offenders from living in many Iowa communities This effectively results in banishment from virtually all of Iowa's cities and larger towns.

In *Smith,* the Supreme Court drew a distinction between Alaska's sex offender registry and colonial punishments such as shaming, branding, and banishment. The Court found that the registry merely involved "dissemination of information," whereas the colonial punishments "either held the person up before his fellow citizens for face-to-face shaming or *expelled him from the community* " *Smith,* 538 U S at 98, 123 S Ct. 1140 (emphasis added). It described the aim of these colonial punishments as making

"offenders suffer permanent stigmas, which in effect cast the person out of the community." *Id.* (internal quotation and citation omitted). The residency requirement is a permanent stigma as well as a law that effectively casts the person out of the community. Further, *Smith* also described as banishment situations in which individuals "could neither return to their original community nor, reputation tarnished, be admitted easily into a new one." *Id.* Under this phrasing, section 692A.2A fits the description of banishment.

**725* Of course, the residency restriction does not prevent offenders from living in every community, nor from visiting communities in which they are not allowed to live. In this way, the law differs from complete banishment. However, preventing offenders from making a home in many Iowa communities after they have served their sentence does have substantial similarity to banishment. To the extent that offenders are effectively banished from their desired places of residence, I would find this factor weighs in favor of finding section 692A.2A punitive.

2. **Does the residency restriction promote traditional aims of punishment?**

The residency restriction serves a traditional aim of punishment: deterrence. The majority attempts to minimize the deterrent effect of the statute by arguing that the statute does not increase the negative consequences for an action, but merely reduces the opportunity for that action to occur. In my view, this distinction is not important. One major reason we use the punishments we do, such as imprisonment, is to reduce the likelihood of future crimes by depriving the offender of the opportunity to commit those crimes. There is clearly a deterrent purpose at work in section 692A.2A, thus the measure promotes a traditional aim of punishment.

3. **Does the residency restriction impose an affirmative disability or restraint?**

The majority acknowledges that the residency requirement imposes an affirmative disability or restraint, and I agree. It restricts offenders from living in certain areas. Offenders that live within the restricted areas face criminal penalties. In this way, the restraint differs greatly from the sex offender registry in *Smith.* The Court in that case pointed out that offenders were "free to change ... residences." *Smith,* 538 U.S. at 100, 123 S.Ct. 1140. The Court also noted that there was no evidence that the measure disadvantaged the offenders in finding housing. *Id.* I would find that the affirmative disability or restraint intrinsic in the residence requirement distinguishes it from the sex offender registry in *Smith* and weighs in favor of finding the law punitive.

4. **Does the residency restriction have a rational connection to a nonpunitive purpose?**

I agree with the majority that section 692A.2A has a rational connection to the nonpunitive purpose of protecting the public. *See In Interest of S.M.M.,* 558 N.W.2d 405, 408 (Iowa 1997).

5. **Is the residency restriction excessive?**

Though I believe a rational connection exists between the residency restriction and a nonpunitive purpose, I would find that the restriction is excessive in relation to that purpose. The statute limits the housing choices of all offenders identically, regardless of their type of crime, type of victim, or risk of re-offending. The effect of the requirement is quite dramatic: many offenders cannot live with their families and/or cannot live in their home communities because the whole community is a restricted area. This leaves offenders to live in the country or in small, prescribed areas of towns and cities that might offer no appropriate, available housing. In addition, there is no time limit to the restrictions.

Also, the residency restriction applies to plaintiffs who are not the most serious sex offenders There is no doubt a class of offenders that is at risk to re-offend and for whom such a restriction is reasonable *726 However, the restriction also applies to John Doe II, who pleaded guilty to third degree sexual abuse for having consensual sex with a fifteen-year-old girl when he was twenty years old The restriction applies to John Doe VII, who was convicted of statutory rape under Kansas law His actions which gave rise to this conviction would not have been criminal in Iowa The restriction applies also to John Doe XIV, who pleaded guilty to a serious misdemeanor charge in 1995 after he exposed himself at a party at which a thirteen-year-old girl was present. John Doe XIV was nineteen at the time of his offense The actions of these and other plaintiffs are serious, and, at least in most cases, illegal in this state However, the severity of residency restriction, the fact that it is applied to all offenders identically, and the fact that it will be enforced for the rest of the offenders' lives, makes the residency restriction excessive.

In my view, four factors weigh in favor of finding the statute punitive, while only one weighs in favor of finding the statute nonpunitive The analysis leads me to the conclusion that the residency restriction is punitive Because the imposition of the residency requirement " 'changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed,' " *Stogner*, 539 U.S. at 612, 123 S.Ct. 2446 (quoting *Calder*, 3 U.S. at 390, 3 Dall. 386, 1 L.Ed. 648), I would find Section 692A.2A is an unconstitutional ex post facto law that cannot be applied to persons who committed their offenses before the law was enacted.

Footnotes

* Judge Morris Sheppard Arnold, Judge Murphy, Judge Bye, Judge Melloy, and Judge Smith would grant the petition for rehearing en banc

1 The text of the statute provides as follows:

692A.2A Residency restrictions—child care facilities and schools.

1 For purposes of this section, "person" means a person who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor

2 A person shall not reside within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility.

3. A person who resides within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school, or a child care facility, commits an aggravated misdemeanor

4. A person residing within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility does not commit a violation of this section if any of the following apply:

a. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility

b The person is subject to an order of commitment under chapter 229A

c. The person has established a residence prior to [ ] July 1, 2002, or a school or child care facility is newly located on or [after] July 1, 2002

d. The person is a minor or a ward under a guardianship

Iowa Code § 692A.2A. The term "residence" is defined as "the place where a person sleeps, which may include more than one location, and may be mobile or transitory " Iowa Code § 692A.1(8)

2 The parties presented substantial evidence concerning the effect of the statute on the availability of housing for sex offenders in Carroll County, Iowa. The district court found that 2077 of 9019 residential units in the county (23 percent) were not in restricted areas The Carroll County Attorney testified that 1694 of the available units were in unincorporated areas of the county, and were "mainly farmhouses," but he noted that the trend toward larger farms has created some vacancies in farmhouses where the party farming the land does not live in the farmhouse Of the remaining 383 units available in the county, the

district court found that 244 were located in towns without a school or child care facility *Doe v. Miller*, 298 F.Supp.2d at 852.

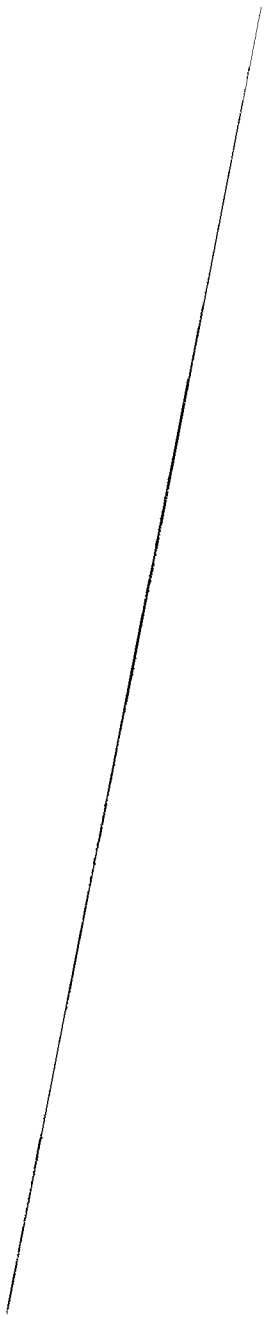
3 In its analysis of the right to interstate travel, the district court also expressed concern that a sex offender might be compelled to avoid Iowa altogether, lest he establish an unlawful residence by "unwittingly falling asleep" at a location within 2000 feet of a school or child care facility. 298 F.Supp.2d at 875. The court stated that "[l]iteral application of the Act would result in the great majority of the State's hotels and motels being restricted to traveling sex offenders," and that "community centers such as homeless shelters and missions will most likely be unavailable to sex offenders because of location." *Id.* This led the court to conclude that "sex offenders would appear to be able to travel to Iowa freely only so long as they do not stop." *Id.*

We question whether these concerns are even applicable to the plaintiffs, given that the plaintiff class was defined as those sex offenders "currently living" in Iowa or "might wish to live" in Iowa, not vacationers or cross-country travelers. *Id.* at 847. In any event, the Does do not rely on these factual assertions in defending the judgment of the district court, and we do not find evidence in the record that would support a specific finding about the proximity of hotels, motels, homeless shelters, and missions throughout Iowa to schools and child care facilities.

4 *See* Ala.Code § 15–20–26(a) ("Unless otherwise exempted by law, no adult criminal sex offender shall establish a residence or accept employment within 2,000 feet of the property on which any school or child care facility is located."); Ark.Code Ann. § 5–14–128(a) ("It shall be unlawful for a sex offender who is required to register ... and who has been assessed as a Level 3 or Level 4 offender to reside within two thousand feet (2000') of the property on which any public or private elementary or secondary school or daycare facility is located."); Cal.Penal Code § 3003(g) ("[A]n inmate who is released on parole for any violation of [sections prohibiting lewd or lascivious acts, or continued sexual abuse of a child] shall not be placed or reside ... within one one-quarter mile of any public or private school."); Fla. Stat. Ann. § 947.1405(7)(a)(2) ("Any inmate convicted of [certain sexual crimes against minors] and ... subject to conditional release supervision ... [is prohibited from] living within 1,000 feet of a school, day care center, park, playground, designated public school bus stop or other place where children regularly congregate."); Ga.Code Ann. § 42–1–13(b) ("No individual required to register ... shall reside within 1,000 feet of any child care facility, school, or area where minors congregate."); 720 Ill. Comp. Stat. § 5/11–9.3(b–5)("It is unlawful for a child sex offender to knowingly reside within 500 feet of a school building ..."); Ky.Rev.Stat. Ann. § 17.495 ("No registrant ... who is placed on probation, parole, or any form of supervised release, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, or licensed day care facility."); La.Rev.Stat. § 14:91.1(A)(2) ("Unlawful presence of a sexually violent predator is ... the physical residing of a sexually violent predator within one thousand feet of any public or private, elementary or secondary school, a day care facility, playground, public or private youth center, public swimming pool, or free standing video arcade facility."); Ohio Rev.Code Ann. § 2950.031(A) ("No person who has been convicted of ... either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense shall establish a residence or occupy residential premises within one thousand feet of any school premises."); Okl. Stat. tit. 57, § 590 ("It is unlawful for any person registered pursuant to the Oklahoma Sex Offenders Registration Act to reside within a two thousand-foot radius of any public or private school site or educational institution."); Or.Rev.Stat. § 144.642(1)(a)(Rules for post-prison supervision or parole "shall include ...a general prohibition against allowing a sex offender to reside near locations where children are the primary occupants or users."); Tenn.Code Ann. § 40–39–211(a) ("No sexual offender, ... or violent sexual offender, ... shall knowingly reside or work within one thousand feet (1,000') of the property on which any public school, private or parochial school, licensed day care center, or any other child care facility is located.").

5 There is evidence in the record that some Iowa law enforcement authorities, rather than immediately file charges against an offender found to be residing in a restricted zone, have withheld charges while the offender sought housing in an unrestricted area. (T. Tr. at 229).

6 In view of our conclusion that the statute is not punitive, it follows that the law is not a "cruel and unusual punishment" in violation of the Eighth Amendment. *See Smith v. Doe,* 538 U.S. at 97, 123 S.Ct. 1140(explaining that factors used in determining whether law is punishment for *ex post facto* purposes "have their earlier origins in cases under the Sixth and Eighth Amendments"); *Trop v Dulles,* 356 U.S. 86, 94–99, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion). Even assuming that § 692A.2A were punitive, we would agree with the district court that the law is neither barbaric nor grossly disproportionate to the offenses committed by the Does. We therefore reject the Eighth Amendment argument urged by the appellees as an alternative ground for affirming the district court.



334 Wis.2d 131
Court of Appeals of Wisconsin.

VILLAGE OF MENOMONEE FALLS, Plaintiff–Respondent,

v.

Jason R. FERGUSON, Defendant–Appellant.

No. 2010AP2167.
Submitted on Briefs Feb. 4, 2011.Opinion Filed April 27, 2011.

Synopsis

Background: Defendant was found in violation of village's sex offender residency restriction ordinance in the municipal court, Bradley W. Matthiesen, J. Defendant appealed, and the Circuit Court, Waukesha County, Linda M. Van de Water, J., affirmed. Defendant appealed.
Holding: The Court of Appeals, Anderson, J., held that defendant, whose former residence was covered by the grandfather clause in sex offender residency restriction ordinance, was required to abide by ordinance when he moved to a new residence.
Affirmed.

West Headnotes (7)

1 **Appeal and Error** Local law; ordinances
Interpretation of a municipal ordinance is a question of law that is ordinarily reviewed de novo.
1 Case that cites this headnote
2 **Appeal and Error** Local law; ordinances
De novo review of a municipal ordinance is especially appropriate when its interpretation will likely have a statewide impact as a result of ordinances in other municipalities with similar language
1 Case that cites this headnote
3 **Municipal Corporations** Applicability of statutory construction rules
The rules of interpretation for a municipal ordinance are the same as those for a statute.
4 **Statutes** Purpose
Statutes Unintended or unreasonable results; absurdity
The objective in interpreting legislation is to reach a reasonable construction that will effectuate the purpose of the legislation at issue.
5 **Municipal Corporations** Plain, ordinary, or common meaning
If the language of the ordinance is plain and clearly understood, the court should apply its ordinary and accepted meaning.
6 **Mental Health** Effect of assessment or determination; notice and registration
Grandfather clause in village's sex offender residency restriction ordinance, which exempted the new residency restrictions for sex offenders who established a residence within a prohibited area prior to the enactment of the new ordinance, applied to the residence rather than the individual, and thus, sex offender, whose former residence was covered by the grandfather clause, was required to abide by ordinance when he moved to a new residence.
1 Case that cites this headnote
7 **Zoning and Planning** Continuance or change of use in general
As a matter of law, when an owner of a nonconforming use modifies that use, the municipality is entitled to terminate the entire nonconforming use.

Attorneys and Law Firms

***473* On behalf of the defendant-appellant, the cause was submitted on the briefs of Daniel P. Fay of Oakton Avenue Law Offices, S.C., Pewaukee.

On behalf of the plaintiff-respondent, the cause was submitted on the brief of H. Stanley Riffle and Julie A. Aquavia of Arenz, Molter, Macy & Riffle, S.C., Waukesha.
***474* Before NEUBAUER, P.J., ANDERSON and REILLY, JJ.[1]

Opinion

ANDERSON, J.
**133* Jason R. Ferguson appeals from the circuit court's judgment finding him guilty of violating the Village of Menomonee Falls sex offender residency restriction ordinance (Village Ordinance). VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES § 62–51(c)(1) (2007).[2] The circuit court did not err. We affirm.

I. Facts

¶ 2 The facts of this case are undisputed. On June 18, 2001, Ferguson was convicted of second-degree sexual assault of a child in violation of WIS. STAT. § 948.02. In October 2003, Ferguson moved to an apartment on Main Street in the Village of Menomonee Falls, which was located within 1500 feet of school facilities for children. Ferguson registered himself as a sex offender and his Main Street address with Wisconsin's Sex Offender Registry. On June 18, 2007, the Village of Menomonee Falls passed a Village Ordinance, which in part provides that "[a]n offender shall not reside within 1,500 feet of real property that supports or upon which **134* there exists ... [a]ny facility for children." VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES § 62–51(c)(1)a.

¶ 3 Also, within the ordinance, is a grandfather clause exception, which, in relevant part, states:
(3) An offender residing within 1,500 feet of real property that supports or upon which there exists any of the [identified] uses ... does not commit a violation of this section if ... a. The offender is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility. [or] b. The offender has established a permanent or temporary residence and reported and registered that residence pursuant to WIS. STATS. § 301.45 prior to the effective date of [the residency restriction].
VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES § 62–51(c)(3)a., b. Therefore, because Ferguson was residing at the Main Street residence prior to the enactment of the Village Ordinance, he was excepted from the residency restriction by the ordinance's grandfather clause.

¶ 4 Some time after the enactment of the statute, Ferguson moved from his Main Street residence to a Menomonee River Parkway residence, also located within the Village of Menomonee Falls. Ferguson's Menomonee River Parkway residence is located less than one mile from his former Main Street residence and is also within 1500 feet of public facilities for children.

¶ 5 On December 10, 2008, following Ferguson's change in residence, a Village of Menomonee Falls police detective made face-to-face contact with Ferguson at the Menomonee River Parkway residence and advised him that because of his change in residence, he was now in violation of the Village Ordinance and had **135* thirty days to vacate the Menomonee River Parkway residence. After the thirty days had passed, the detective again made face-to-face contact with Ferguson at the Menomonee ***475*River Parkway residence, and on February 2, 2009, because Ferguson had not vacated the residence, the detective issued him a citation for violating the Village Ordinance's residency restriction.

¶ 6 Ferguson challenged the ordinance violation in Menomonee Falls municipal court; on November 11, 2009, Municipal Judge Bradley W. Matthiesen upheld the citation.

¶ 7 Ferguson appealed the ruling to the Waukesha county circuit court on December 4, 2009. On February 3, 2010, Ferguson filed a motion to dismiss, alleging that although his Menomonee River Parkway residence was within 1500 feet of a child safety zone as prohibited by the Village Ordinance, he was excepted by the ordinance's grandfather clause provisions because he had "established a permanent or

temporary residence and reported and registered that residence pursuant to WIS STATS § 301 45 prior to the effective date of [the residency restriction]" as provided by VILLAGE OF MENOMONEE FALLS, WIS , CODE OF ORDINANCES § 62–51(c)(3)b Ferguson argued that the grandfather clause exception, which allowed him to reside in the Main Street residence, also allowed him to reside in the Menomonee River Parkway residence because "an individual does not commit a violation if he has established a permanent or temporary residence and registered that residence" prior to the enactment of the ordinance

¶ 8 In response, the Village filed a Reply Brief in Opposition to Motion to Dismiss Citation on April 29, 2010 In its brief, the Village agreed that Ferguson's Main Street residence had been excepted by VILLAGE OF MENOMONEE FALLS, WIS , CODE OF ORDINANCES *136 § 62–51(c)(3)b However, the Village argued that once Ferguson moved to the Menomonee River Parkway residence, he lost the protection of the grandfather clause exception in effect for the Main Street residence The Village argued that the Village Ordinance's grandfather clause excepts only the residence, not the sex offender, and thus Ferguson violated the Village Ordinance when he moved from the excepted Main Street residence to the unexcepted Menomonee River Parkway residence

¶ 9 The circuit court denied Ferguson's motion to dismiss on May 24, 2010 The court held that the Village Ordinance's grandfather clause exception allowed Ferguson to reside at the Main Street residence However, the court interpreted the grandfather clause exception to mean that a sex offender is no longer immune if he or she moves to another residence after the ordinance's date of enactment The matter proceeded to trial

¶ 10 At trial on July 15, 2010, Ferguson stipulated that he was an offender as the term is used throughout the Village Ordinance. Ferguson also admitted that from December 10, 2008, to the date of the trial, July 15, 2010, he resided at the Menomonee River Parkway residence and registered that residence with Wisconsin's Sex Offender Registry. However, Ferguson argued that although the Menomonee River Parkway residence was within 1500 feet of a child safety zone as prohibited by the Village Ordinance, he was excepted by its grandfather clause. Specifically, because he was an offender "required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution," VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES § 62–51(c)(3)a, and had also "established a permanent or temporary residence and reported and registered that residence pursuant to WIS. STATS § 301.45 prior to *137 the effective date of [the residency restriction] " VILLAGE OF MENOMONEE FALLS, WIS , CODE OF ORDINANCES § 62–51(c)(3)b.

¶ 11 In response, the Village noted that the latter half of Ferguson's argument— **476that his establishment of permanent or temporary residence allowed him to move throughout the child safety zone—had been dismissed by the court at the motion hearing on May 24, 2010, and was no longer at issue. The Village argued that if the court accepted the former half of Ferguson's argument—that his time at jail, prison, juvenile facility, or correctional institution allowed him to move throughout a child safety zone—it would contravene the very purpose of the Village Ordinance and lead to an absurd conclusion.

¶ 12 The court determined that Ferguson's Menomonee River Parkway residence was not protected by the Village Ordinance's grandfather clause exception. The court reasoned that the Village Ordinance's grandfather clause exception does not travel with the sex offender to allow him or her to move wherever he or she wants within the prohibited 1500 foot area. Moreover, the court held that if it accepted Ferguson's argument—that his time at jail, prison, juvenile facility, or correctional institution allowed him to move throughout a child safety zone—it would cause an absurd result by which any offender who was convicted and served time pursuant to any offense listed within the Village Ordinance would be excepted from the ordinance Therefore, the court upheld the Menomonee Falls municipal court's ruling and found Ferguson guilty of violating the Village Ordinance [3]

¶ 13 Ferguson appeals

*138 II Standard of Review

1,2 ¶ 14 This matter requires interpretation of a municipal ordinance, which is a question of law we ordinarily review de novo. *Board of Regents v Dane Cnty Bd of Adjustment,* 2000 WI App 211, ¶ 12, 238 Wis.2d 810, 618 N.W.2d 537 (citing *Marris v City of Cedarburg,* 176 Wis.2d 14, 32, 498 N.W.2d 842 (1993)). De novo review of an ordinance is especially appropriate when its interpretation will likely have a statewide impact as a result of ordinances in other municipalities with similar language. *See Board of Regents,* 238 Wis.2d 810, ¶ 12, 618 N W.2d 537.

3,4,5 ¶ 15 The rules of interpretation for a municipal ordinance are the same as those for a statute. *State v Ozaukee Cnty Bd. of Adjustment,* 152 Wis.2d 552, 559, 449 N W.2d 47 (Ct App.1989). The objective in interpreting legislation is to reach a reasonable construction that will effectuate the purpose of the legislation at issue. *State ex rel. Melentowich v Klink,* 108 Wis 2d 374, 380, 321 N.W.2d 272 (1982) If the language of the ordinance is plain and clearly understood, the court should apply its ordinary and accepted meaning. *See Maier v Kalwitz,* 134 Wis.2d 207, 209–10, 397 N.W 2d 119 (Ct.App.1986).

III State Residency Restrictions Limit Grandfather Clauses

¶ 16 At issue here is a municipal residency restriction ordinance. *See* VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES § 62–51(c)(1), (3). In Wisconsin, sex offenders must register themselves and their address with the department of corrections, WIS STAT § 301.45(1g), (2). However, Wisconsin does not have a sex offender residency restriction statute. Instead, Wisconsin *139municipalities are allowed and commonly do enact sex offender residency restriction ordinances. *See generally* CITY OF BROOKFIELD, WIS., MUNICIPAL CODE § 9.34.030 (2011); VILLAGE OF BROWN DEER, WIS , CODE OF ORDINANCES § 34–3 (2010); VILLAGE OF GERMANTOWN, WIS., MUNICIPAL CODE § 9.50 (2010), VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES § 62–51.

**477 6 ¶ 17 Here, the unambiguous language of the ordinance's grandfather clause exception, "[t]he offender has established *a* permanent or temporary *residence*and reported and registered *that residence* prior to the effective date" leads to the inescapable conclusion the exception is for the residence and not the individual. *See*VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES § 62–51(c)(3)b.

¶ 18 This conclusion is supported by reviewing how other jurisdictions have handled similar sex offender residency restrictions. We found particularly persuasive the Iowa Supreme Court's interpretation of an Iowa statute very similar to Menomonee Falls' Village Ordinance.

¶ 19 Iowa's statute prohibited convicted sex offenders from living within 2000 feet of a school or child care facility. *State v Finders,* 743 N.W.2d 546, 548 (Iowa 2008). Like the Village Ordinance, the statute contained a grandfather clause exemption for sex offenders who established a residence within a prohibited area prior to the enactment of the statute. *See id* Prior to the enactment of the statute, the defendant was found guilty of a sexual offense against a minor and was subjected to the state's sex offender registration laws *Id.* at 547. Also prior to the enactment of the statute, the defendant had established a residence within a zone subsequently prohibited by the statute *Id* As a result, *140 the defendant's residence was exempted under the statute's grandfather clause. *Id* Following the enactment of the statute, the defendant moved to another residence in the same prohibited area, within 2000 feet of a school or childcare facility. *See id* Because he no longer resided at an exempted residence, the defendant was charged with violating the statute's residency restrictions and was found guilty *Id*

¶ 20 On appeal, the Iowa Supreme Court affirmed the lower court's ruling *Id* at 550 It held that the grandfather clause exemption within a state sex offender residency restriction statute only exempted an individual sex offender from the statute if the offender maintained the residence he or she had prior to the enactment of the statute *Id* It explained its role in interpreting a criminal statute was to "seek a reasonable interpretation that will best affect the legislative purpose and avoid absurd results " *Id* at 548 (citations omitted) Thus, looking to the language of the statute, it concluded that the grandfather clause exemption applied to sex offenders who established "a residence," meaning a specific residence, and that it did not apply to a sex offender's "residency" or "any residence" for that matter *Id.* at 549 Therefore, the grandfather clause exemption did not apply to a sex offender who once resided in an exempted residence but moved to a new residence, even if the new residence was within the same prohibited area. *See id.*

¶ 21 The Iowa Supreme Court further explained that if it applied the grandfather clause exemption to the individual instead of the residence, it would cause an absurd result: allowing sex offenders to move in and out of the same prohibited zone with impunity *Id.* It stated that the purpose of the residency restriction statute was to "reduce the high risk of recidivism posed ***141*** by sex offenders," and the purpose of the grandfather clause was to "avoid the harsh effect of the retroactive application of the two thousand foot rule " *Id* If the court were to interpret the grandfather clause exemption to apply to the individual over the residence, it would undermine the purpose behind the residency restriction statute *See id*

¶ 22 Similarly, if this court were to interpret the Village Ordinance's grandfather ***478*** clause to apply to Ferguson as an individual instead of his residence, the purpose of the Village Ordinance would be undermined. The purpose and intent behind the Village Ordinance is to address recidivism "reducing opportunity and temptation" for sex offenders and "to protect children where they congregate or play in public places." VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES § 62–51(a)(1) To achieve the ordinance's purpose and intent, "certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence" in areas around locations "where children regularly congregate in concentrated numbers." Sec 62–51(a)(2) Several municipalities surrounding the Village of Menomonee Falls passed sex offender residency restriction ordinances with language similar to that of the Village Ordinance, including its grandfather clause exception *See generally* CITY OF BROOKFIELD, WIS , MUNICIPAL CODE § 9 34.030 (2011); Village of Brown Deer, Wis., Code of Ordinances § 34–3 (2010); VILLAGE OF GERMANTOWN, WIS , MUNICIPAL CODE § 9.50 (2010).

¶ 23 We agree with the rationale of the Iowa Supreme Court in *Finders* If we were to interpret the Village Ordinance's grandfather clause exception to extend to an individual sex offender instead of his or her residence, it would lead to an absurd result undermining the very purpose of the Village Ordinance We ***142*** will not adopt such an absurd interpretation Though we could end our discussion here, it is relevant to note that our interpretation of grandfather clauses in Wisconsin zoning ordinances also supports a narrow interpretation of the Village Ordinance's grandfather clause.

IV Wisconsin Zoning Ordinances Limit Grandfather Clauses

¶ 24 Although there is no Wisconsin sex offender residency restriction statute or any law on the subject of grandfather clauses in municipal sex offender residency restriction ordinances, such restrictions are similar in nature to zoning ordinances, many of which also contain grandfather clause exceptions This court has previously held that a zoning ordinance's grandfather clause exception ends once there is a change of use within that zoning area, thus, supporting a narrow interpretation of the Village Ordinance's grandfather clause

¶ 25 In *Waukesha County v Pewaukee Marina, Inc*, 187 Wis 2d 18, 21, 24, 522 N W 2d 536 (Ct.App 1994), this court analyzed a zoning ordinance with a grandfather clause exception in the context

of conforming building and premises usage. In *Pewaukee Marina,* a county brought an action against a marina owner for expanding and enlarging the use of his property, which invalidated a county ordinance exception that allowed the owner to maintain the property as a nonconforming use. *Id.* at 20, 522 N.W.2d 536. The marina owner argued that under Wisconsin statute, the county lacked valid authority to invalidate his expansion or enlargement of his marina as an excepted nonconforming use. *Id.* Moreover, he alleged that the expansion or enlargement was valid because the marina's nonconforming use was not changed, but instead, improved. *Id.* The county, however, ***143** alleged that although it lacked statutory authority, the purpose behind the relevant Wisconsin statute was to protect the original use of premises, and thus, the county had implied authority to restrict nonconforming uses of the particular premises under the county ordinance. *Id.* at 22–23, 522 N.W.2d 536.

¶ 26 We held that the county had the power to enact an ordinance that prohibited nonconforming building and premise uses. *Id.* at 20, 24, 522 N.W.2d 536. ****479**However, we also concluded that the county could not prohibit nonconforming uses where that nonconforming use existed prior to the enactment of the ordinance. *Id.* at 23–24, 522 N.W.2d 536 (citing *State ex rel. Brill v. Mortenson,* 6 Wis.2d 325, 330, 94 N.W.2d 691 (1959)). We then reasoned that because the county had the authority to regulate new, prohibited uses in effect after the enactment of the ordinance, the owner's expansion and enlargement of his marina, which changed its excepted nonconforming use, violated the ordinance and was subject to county regulation. *Pewaukee Marina,* 187 Wis.2d at 20, 24, 27, 522 N.W.2d 536. In short, we concluded that, although a nonconforming use that was established before the enactment of the ordinance is excepted from that ordinance, once that nonconforming use is altered, it loses its protection. *See id.* at 24, 522 N.W.2d 536.

7 ¶ 27 Similar to the underlying purpose of zoning laws, sex offender residency restriction ordinances aim to restrict and eliminate nonconforming uses, i.e., sex offenders residing in prohibited areas. *See id.* at 29, 522 N.W.2d 536 (citing *Waukesha Cnty. v. Seitz,* 140 Wis.2d 111, 116, 409 N.W.2d 403 (Ct.App.1987)). Thus, according to *Pewaukee Marina,* if an excepted but nonconforming use is altered, both the once excepted, nonconforming use and the subsequent change of that use are invalid. ***144** *Pewaukee Marina,* 187 Wis.2d at 30–31, 522 N.W.2d 536. "As a matter of law, when an owner of a nonconforming use modifies that use, the municipality is entitled to terminate the entire nonconforming use." *Village of Menomonee Falls v. Preuss,* 225 Wis.2d 746, 748, 593 N.W.2d 496 (Ct.App.1999).

¶ 28 In this case, the nonconforming use of Ferguson's Main Street residence—housing a sex offender within an area prohibited by the Village Ordinance—was excepted by the ordinance's grandfather clause until Ferguson modified the excepted, nonconforming use by changing his residence. Therefore, the Village of Menomonee Falls is entitled to restrict Ferguson's nonconforming use and penalize him for violating the Village Ordinance.

¶ 29 We conclude that the circuit court did not err when it denied Ferguson's motion to dismiss and issued a judgment finding Ferguson guilty of violating VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES § 62–51. The Village Ordinance's grandfather clause exception applies to the sex offender's residence, not the individual sex offender. Analogous to this court's jurisprudence on zoning laws, once an excepted nonconforming use alters that use, it is no longer excepted and the municipality has the authority to punish that violation. Therefore, once Ferguson, whose Main Street residence was excepted under the ordinance, changed his residence to the Menomonee River Parkway residence, he lost the protection of the exception and is prohibited from establishing a new residence within 1500 feet of a child safety zone, even within the same child safety zone.
Judgment affirmed.

Vill. Of Menomonee Falls v Ferguson, 334 Wis.2d 131 (Wis. Ct. App. 2011)

Footnotes

1 The chief judge of the court of appeals converted this from an appeal decided by one judge to a three-judge panel by order dated March 23, 2011. *See* WIS. STAT. RULE 809.41(3) (2009–10). All references to the Wisconsin Statutes are to the 2009–10 version unless otherwise noted.

2 VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES, § 62–51 was enacted June 18, 2007, and the most recent version, codified through December 20, 2010, remains unchanged. All references to § 62–51 of the VILLAGE OF MENOMONEE FALLS, WIS., CODE OF ORDINANCES are to the 2007 version, under which Ferguson was initially excepted.

3 Additionally, the court imposed a fine of $1164 on Ferguson.

347 Wis.2d 334
Court of Appeals of Wisconsin.

CITY OF SOUTH MILWAUKEE, Plaintiff–Respondent,

v.

Todd J. KESTER, Defendant–Appellant.†

No. 2012AP724.

Submitted on Briefs Jan. 10, 2013.Opinion Filed March 13, 2013.

Synopsis

Background: City brought action against sex offender, seeking to declare his residency within 1,000 feet of an elementary school a public nuisance and to enjoin him from living in the home The Circuit Court, Milwaukee County, Maxine A. White, J , granted the injunction and ordered offender to move Offender appealed.

Holdings: The Court of Appeals, Reilly, J., held that:
1 offender's status coupled with his residency within 1,000 feet of an elementary school constituted a public nuisance per se;
2 entry of injunction and order without first conducting a hearing to determine offender's dangerousness did not deny offender procedural due process,
3 State's comprehensive regulatory scheme regarding sex offenders did not preempt City's public nuisance ordinance; and
4 City ordinance was a nonpunitive measure such that its retroactive application to offender did not violate his right of protection against double jeopardy and ex post facto laws.
Affirmed.

West Headnotes (25)

1 **Nuisance** Acts authorized or prohibited by public authority
Nuisance Abatement by act of public authorities
Status of sex offender, having been convicted of sexual assault of a child, coupled with his residency within 1,000 feet of an elementary school constituted a public nuisance per se under the public nuisance ordinance, which prohibited certain types of child sex offenders from residing within 1,000 feet of certain facilities, and thus, city was not required to perform an independent risk assessment and establish offender's dangerousness before seeking and obtaining an injunction and order requiring him to relocate away from the school. W.S.A. 948.02(2).

2 **Municipal Corporations** Nuisances in general
Municipalities have broad authority through their police powers to protect the health, safety, and welfare of their residents, including the ability to define and take action against public nuisances W.S.A. 62.11(5).

3 **Nuisance** Nature and elements of private nuisance in general
Nuisance Trial or hearing
Nuisance Questions for jury
A nuisance per se may be established by law, and no actual injurious consequences are required to support a finding of a nuisance per se

4 **Municipal Corporations** Police power and regulations
When a municipality has enacted an ordinance that defines a public nuisance per se, courts should not interfere in this determination absent a showing of oppressiveness or unreasonableness

5 **Nuisance** Nuisances subject to abatement or injunction
An injunction is a permissible remedy to enforce an ordinance establishing a nuisance per se

6 **Constitutional Law** Classification and registration, restrictions and obligations
Nuisance Actions

Entry of injunction and order prohibiting sex offender from residing within 1,000 feet of an elementary school upon finding that the location of offender's residence constituted a nuisance per se under the public nuisance ordinance, without first conducting a hearing to determine whether offender's continued residency substantially interfered with the safety of others, did not deny offender procedural due process, subject to a limited list of exceptions, the only material issues were whether offender was convicted of one of the child sex offenses listed in the ordinance and, if so, whether he was living within 1,000 feet of a school, and offender had an opportunity to contest each issue U S.C.A. Const.Amend 14

7 Constitutional Law Notice and Hearing

Procedural due process requires that a party whose rights may be affected by government action be given an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked U.S.C A. Const.Amend. 14

4 Cases that cite this headnote

8 Constitutional Law Notice and Hearing

An opportunity to be heard in court at a meaningful time and in a meaningful manner satisfies procedural due process. U.S.C.A Const.Amend 14

9 Appeal and Error Constitutional Rights, Civil Rights, and Discrimination in General

Due process claims raise questions of law that are reviewed de novo U.S.C A. Const.Amend. 14

2 Cases that cite this headnote

10 Municipal Corporations Concurrent and Conflicting Exercise of Power by State and Municipality

Nuisance Nature of remedy

State's comprehensive regulatory scheme regarding sex offenders did not preempt City's public nuisance ordinance prohibiting sex offenders from residing within 1,000 feet of elementary schools; state's regulatory scheme provided for both the reassimilation of sex offenders into the larger community and the protection of the public, and the ordinance did not defeat the purpose or violate the spirit of the state laws regulating child sex offenders W S.A. 301.03(19).

1 Case that cites this headnote

11 Appeal and Error State preemption of local law

Whether state law preempts a local ordinance raises a question of law that is reviewed de novo

12 Municipal Corporations Local legislation

A city's authority to act under its home-rule powers is limited when it comes to subject matters of statewide concern. W.S.A Const. Art. 11, § 3, W.S.A. 62 11(5)

13 Municipal Corporations Local legislation

In determining whether an ordinance is preempted by state law, a court must first determine whether the subject area being regulated is one of statewide concern. W S.A. Const. Art. 11, § 3; W.S.A. 62.11(5)

14 Mental Health Effect of assessment or determination; notice and registration

Restricting where convicted child sex offenders may live in relation to where children congregate is within the discretion granted to the corrections department; however, regulation of convicted child sex offenders, including where they may live after release from confinement, is clearly a matter of both statewide and local concern. W.S.A. 301 48(2g), (3)(c).

15 Municipal Corporations Concurrent and Conflicting Exercise of Power by State and Municipality

An ordinance regulating an area of statewide concern is preempted only if· (1) the Legislature has expressly withdrawn the power of municipalities to act; (2) the ordinance logically conflicts with state legislation, (3) the ordinance defeats the purpose of state legislation, or (4) the ordinance violates the spirit of state legislation.

16 Constitutional Law Sex Offenders

Double Jeopardy Particular proceedings

Mental Health Sex offenders

City ordinance prohibiting sex offenders from residing within 1,000 feet of schools was a nonpunitive, civil regulatory measure aimed at protecting the community such that its retroactive application to offender did not violate his right of protection against double jeopardy and ex post facto laws, ordinance expressly described itself as "a regulatory measure aimed at protecting the health and safety of children"

in the City, and although the ordinance placed burdens upon offender and other child sex offenders who wished to live in City, it could not be said these restrictions were not reasonable to achieve the City's purpose of protecting against the risk that a child sex offender may reoffend. U.S.C.A. Const. Art. 1, § 10, cl. 1; U.S.C.A. Const.Amend. 5.

2 Cases that cite this headnote

17 Constitutional Law Penal laws in general

Double Jeopardy Civil or criminal nature

In any challenge to an ordinance on double jeopardy and ex post facto grounds, the threshold question is whether the ordinance is punitive, as both clauses apply only to punitive laws. U.S.C.A. Const. Art. 1, § 10, cl. 1; U.S.C.A. Const.Amend. 5.

1 Case that cites this headnote

18 Criminal Law Constitutional issues in general

Criminal Law Defenses

Whether an ordinance may be considered punitive for double jeopardy or ex post facto purposes is an issue of law that is reviewed independently. U.S.C.A. Const. Art. 1, § 10, cl. 1; U.S.C.A. Const.Amend. 5.

19 Constitutional Law Penal laws in general

Constitutional Law Punishment in general

Double Jeopardy Civil or criminal nature

Courts employ a two-part "intent-effects test" to answer whether a law applied retroactively is punitive and, therefore, an unconstitutional violation of the Double Jeopardy and Ex Post Facto Clauses, whereby they first look at the intent of the legislative body in creating the law and, if the courts find the intent was to impose punishment, the law is considered punitive and the inquiry ends there; if courts find that the intent was to impose a civil and nonpunitive regulatory scheme, they must next determine whether the effects of the sanctions imposed by the law are so punitive as to render them criminal. U.S.C.A. Const. Art. 1, § 10, cl. 1; U.S.C.A. Const.Amend. 5.

4 Cases that cite this headnote

20 Constitutional Law Penal laws in general

Double Jeopardy Civil or criminal nature

Only the clearest proof will convince courts that what a legislative body has labeled a civil remedy is, in effect, a criminal penalty, for purposes of determining whether a law applied retroactively is punitive and, therefore, an unconstitutional violation of the Double Jeopardy and Ex Post Facto Clauses. U.S.C.A. Const. Art. 1, § 10, cl. 1; U.S.C.A. Const.Amend. 5.

3 Cases that cite this headnote

21 Constitutional Law Penal laws in general

Double Jeopardy Civil or criminal nature

Determining legislative intent for purposes of determining whether a law applied retroactively is punitive and, therefore, an unconstitutional violation of the Double Jeopardy and Ex Post Facto Clauses is primarily a matter of statutory construction that asks whether the legislative body, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other. U.S.C.A. Const. Art. 1, § 10, cl. 1; U.S.C.A. Const.Amend. 5.

2 Cases that cite this headnote

22 Statutes Statements of purpose, intent, or policy in general

When interpreting a statute, considerable deference must be accorded to the intent as the Legislature has stated it.

23 Constitutional Law Punishment in general

Double Jeopardy Civil or criminal nature

Not all forms of restraint are equivalent to punishment for purposes of determining whether a law applied retroactively is punitive and, therefore, an unconstitutional violation of the Double Jeopardy and Ex Post Facto Clauses. U.S.C.A. Const. Art. 1, § 10, cl. 1; U.S.C.A. Const.Amend. 5.

24 Constitutional Law Penal laws in general

Double Jeopardy Civil or criminal nature
Mere presence of a deterrent purpose without more is not enough to make criminal a civil regulation, for purposes of determining whether a law applied retroactively is punitive and, therefore, an unconstitutional violation of the Double Jeopardy and Ex Post Facto Clauses U S C A Const Art 1, § 10, cl 1, U S C A. Const.Amend. 5
25 Constitutional Law Penal laws in general
Double Jeopardy Civil or criminal nature
When determining whether a law applied retroactively is punitive and, therefore, an unconstitutional violation of the Double Jeopardy and Ex Post Facto Clauses, a statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance, nor does the measure need to represent the best choice possible to address the problem the legislative body seeks to remedy, the question is whether the regulatory means chosen are reasonable in light of the nonpunitive objective. U.S.C.A. Const. Art. 1, § 10, cl. 1, U.S.C.A Const.Amend. 5.

Attorneys and Law Firms

***713* On behalf of the defendant-appellant, the cause was submitted on the briefs of Laurence J. Dupuis of American Civil Liberties Union of Wisconsin Foundation, Inc., Milwaukee.
On behalf of the plaintiff-respondent, the cause was submitted on the brief of Joseph G Murphy of Murphy & Leonard, LLP, South Milwaukee
A nonparty brief was filed by Ellen Henak of Henak Law Office, S C of Milwaukee for Wisconsin Association of Criminal Defense Lawyers
Before BROWN, C.J., NEUBAUER, P.J., and REILLY, J.

Opinion

***714* REILLY, J
**341* ¶ 1 Todd J Kester was convicted of sexually assaulting a child in 2000. In April 2010, Kester moved into a residence in the City of South Milwaukee that was within 1000 feet of an elementary school. The City has an ordinance that prohibits child sex offenders such as Kester from living within 1000 feet of elementary schools. Kester was told by the City that he had to move. Kester refused. The City filed an action in circuit court, asking the court to declare Kester's residency a public nuisance and to enjoin him from living in the home The circuit court granted the injunction and ordered Kester to move

¶ 2 Kester appeals, arguing that his residency should not have been declared a nuisance without an individual determination of his dangerousness, that his right to procedural due process was denied as he was not permitted to show he did not pose a risk of harm to children, that the City's ordinance is preempted by state law, and that the City's ordinance as applied to him violates the Double Jeopardy and Ex Post Facto Clauses of the United States and Wisconsin Constitutions. We disagree and affirm the circuit court.

BACKGROUND

¶ 3 Kester was convicted on November 6, 2000, of second-degree sexual assault of a child in violation of WIS. STAT § 948 02(2) (2011–12)[1] for an offense that occurred while he lived in Sheboygan In April 2010, Kester moved to a residence in the City of South Milwaukee within 1000 feet of Lakeview School, a public elementary school The City had in effect an ordinance **342* (the Ordinance) forbidding anyone convicted of committing certain sex offenses against children, including § 948 02(2), from living within 1000 feet of a school or other facility found to be frequented by children. SOUTH MILWAUKEE, WIS., MUN.CODE (SMMC) § 23 167–2, –3(effective Aug. 30, 2007). The Ordinance also applied to individuals found not guilty by reason of mental defect or disease of committing one of the enumerated offenses against children SMMC § 23.167–3 The Ordinance's declared purpose was to "protect [ ] the

health and safety of children in South Milwaukee from the risk that convicted sex offenders may re-offend in locations close to their residences " SMMC § 23 167–1.

¶ 4 The Ordinance provided certain exceptions for people who had established residences in South Milwaukee prior to the effective date of the Ordinance (August 30, 2007), for those who resided in their homes prior to a children's facility moving within 1000 feet of their residences, for those living in South Milwaukee at the time of their most recent child sex convictions; and for minors or wards under guardianship. SMMC § 23 167–4, –5 For all others, the Ordinance required the City attorney, upon notification of a violation by the police chief, to "bring an action in the name of the City in the Circuit Court of Milwaukee County to permanently enjoin such residency as a public nuisance " SMMC § 23.167–7.

¶ 5 After Kester refused to move, the City filed a complaint in Milwaukee County Circuit Court requesting that Kester's continued residency be found a public nuisance and that the court issue an injunction requiring him to move. Kester admitted that he was convicted under WIS. STAT § 948.02(2) in November 2000 while residing ***715*in Sheboygan and that he currently lived within 1000 feet of Lakeview School Kester moved for judgment ***343*** on the pleadings on various grounds, including those raised in this appeal The court denied Kester's motion.

¶ 6 The City brought two motions to the court first, for partial summary judgment on the issue of whether Kester's continued residency constituted a public nuisance and, second, for an order preventing Kester from offering evidence that he did not pose a risk of reoffense and was not a public nuisance The court granted both of the City's motions. The court ultimately issued an injunction and ordered Kester to move. Kester appeals.

DISCUSSION

¶ 7 Kester raises four issues on appeal. His first two arguments are related in that he asserts that the circuit court erred in issuing an injunction without determining whether his residency constituted an actual public nuisance based on his risk of reoffending and, secondly, that his right to procedural due process is violated by applying a nuisance "per se" standard to him. Kester argues next that the Ordinance is preempted by state laws regulating sex offenders and, lastly, that the Ordinance as applied to him violates both the Double Jeopardy and Ex Post Facto Clauses of the United States and Wisconsin Constitutions

Kester's Status Coupled with his Residency Within 1000 Feet of a School Constitutes a Public Nuisance Per Se Under the Ordinance

1 ¶ 8 Kester argues that before a court may find him to be a public nuisance under the Ordinance, the City must show that he is a nuisance by his acts or his ***344*likelihood to act in a detrimental way. Stated differently, Kester argues that in order to enjoin his continued residency within 1000 feet of Lakeview School, the City must establish that his residency is an "actual nuisance" utilizing the common-law definition of nuisance.[2] We address Kester's argument first by examining the power of municipalities to govern nuisances and finish by examining the ordinance in question.

2,3,4,5 ¶ 9 Municipalities have broad authority through their police powers to protect "the health, safety, and welfare" of their residents, including the ability to define and take action against public nuisances. *See* WIS STAT. § 62.11(5); *Dallmann v Kluchesky,* 229 Wis. 169, 173, 175–76, 282 N.W 9 (1938). A nuisance per se may be established by law, and no actual injurious consequences are required to support a finding of a nuisance per se *In re Eldred,* 46 Wis. 530, 543, 1 N.W. 175 (1879). When a municipality has enacted an ordinance that defines a public nuisance per se, courts should not interfere in this determination absent a showing of "oppressiveness or unreasonableness." *Boden v City of Milwaukee,* 8 Wis 2d 318, 325, 99 N W.2d 156 (1959) An injunction is a permissible remedy to enforce

an ordinance establishing a nuisance per se. *See Village of Wind Point v Halverson,* 38 Wis.2d 1, 11, 155 N.W.2d 654 (1968)

¶ 10 The City of South Milwaukee determined that certain types of child sex offenders who live within 1000 feet of children's facilities interfere substantially in the enjoyment of life, health, and safety of the **345* residents of the City and constitute public nuisances. The City enacted SMMC § 23.167 to preclude such nuisances. ***716*The clear language of the Ordinance establishes a public nuisance per se. The Ordinance employs two criteria that, subject to limited exceptions, define a public nuisance: (1) a person who has been convicted or found not guilty by reason of a mental defect or disease of one of a number of child sex crimes and (2) that person's residency within 1000 feet of any one of an enumerated list of facilities. SMMC § 23.167–2, –3. No other evidence is required to find the existence of a public nuisance for which an injunction may be issued.

¶ 11 Notably, Kester does not argue that the Ordinance's criteria (his status as a convicted child sex offender and the distance between his residence and the school) are oppressive or unreasonable. *See Boden,* 8 Wis.2d at 325, 99 N.W.2d 156. Instead, Kester argues that the language of the Ordinance requires an individual determination that he constitutes an "actual nuisance."[3] We think it clear that such an individual determination is not required by the Ordinance when read in its entirety. *See State ex rel. Kalal v. Circuit Ct. for Dane Cnty.,* 2004 WI 58, ¶ 46, 271 Wis.2d 633, 681 N.W.2d 110. The Ordinance forbids certain types of child sex offenders from residing within 1000 feet of certain facilities. SMMC § 23.167–3. The Ordinance carves out exceptions to this rule, which do not involve an individual risk assessment. SMMC § 23.167–4, –5. The City attorney has no **346* discretion over whether to bring an action to enjoin a public nuisance when presented with evidence of a violation by the police chief. *See* SMMC § 23.167–7.

¶ 12 The City must prove that Kester falls within the type of sex offender identified by the Ordinance and that Kester resides within 1000 feet of an identified children's facility; the City need not prove any "detrimental acts" engaged in by Kester to obtain an injunction. The Ordinance on its face establishes that Kester's status as a convicted child sex offender under WIS. STAT. § 948.02(2) coupled with his residing within 1000 feet of a school constitutes a public nuisance per se for which an injunction may be issued.

Kester's Right to Procedural Due Process Was Not Violated

6,7,8,9 ¶ 13 Kester next argues that the denial of a hearing as to whether his continued residency substantially interferes with the safety of others deprives him of important liberty and property rights without due process. "Procedural due process requires that a party whose rights may be affected by government action be given an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." *Wilke v. City of Appleton,* 197 Wis.2d 717, 726, 541 N.W.2d 198 (Ct.App.1995). "[A]n opportunity to be heard in court at a meaningful time and in a meaningful manner" satisfies procedural due process. *Id.* at 727, 541 N.W.2d 198.Due process claims raise questions of law that we review de novo. *See id.* at 726, 541 N.W.2d 198.

¶ 14 Kester's due process argument misses the mark. As we have explained, in enacting the Ordinance, the City identified the criteria for what constitutes a **347*public nuisance per se. Subject to a ***717* limited list of exceptions, the only material issues are (1) whether Kester was convicted of one of the child sex offenses listed in the Ordinance and (2) whether Kester was living within 1000 feet of a school. Kester had an opportunity to contest each issue before the circuit court but did not do so. Proof of future bad acts by Kester is not required nor material to a determination of whether Kester's residency constitutes a public nuisance. *See Connecticut Dep't of Pub. Safety v. Doe,* 538 U.S. 1, 7, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003). Procedural due process does not entitle Kester to a hearing on an immaterial issue. *See id.*

State Law Does Not Preempt the Ordinance

10,11 ¶ 15 Kester contends that Wisconsin's comprehensive regulatory scheme regarding sex offenders preempts the Ordinance Whether state law preempts a local ordinance raises a question of law that we review de novo *DeRosso Landfill Co v City of Oak Creek,* 200 Wis 2d 642, 652, 547 N W 2d 770 (1996)

12,13 ¶ 16 Wisconsin municipalities have broad authority to act under the home-rule powers granted by article XI, section 3 of the Wisconsin Constitution and WIS STAT § 62 11(5) This authority is limited, however, when it comes to subject matters of "statewide concern " *U S Oil, Inc v City of Fond Du Lac,* 199 Wis 2d 333, 339–40, 544 N W.2d 589 (Ct.App.1996) Thus, in determining whether the Ordinance is preempted by state law, we must first determine whether the subject area being regulated is one of "statewide concern " *Id*

14 ¶ 17 The state legislature has adopted many laws related to sex offenders, including those whose victims ***348** are children *See, e g*, WIS STAT. §§ 301.03(3b), (19)–(20), 301.48, 302.116, 304.06(1q), (2m), 939.615–939.617, 939.635, 948 02–948.025, 948.05–948 13, and WIS. STAT ch 980 This statutory scheme is both "complex and comprehensive" and deals with almost "all aspects" of the prosecution, punishment, confinement, and rehabilitation of such offenders. *See Anchor Sav & Loan Ass'n v Equal Opportunities Comm'n,* 120 Wis.2d 391, 397–98, 355 N.W 2d 234 (1984). Restricting where convicted child sex offenders may live in relation to where children congregate is within the discretion granted to the department of corrections *See* §§ 301.03(19)–(20), 301.48(2g), (3)(c) Regulation of convicted child sex offenders, including where they may live after release from confinement, is clearly a matter of both statewide and local concern

15 ¶ 18 The fact that the regulation of sex offenders is a matter of statewide concern, however, does not preclude municipalities such as the City from using their home-rule powers to impose further restrictions consistent with those imposed by the state. *See Fox v City of Racine,* 225 Wis. 542, 545–46, 275 N.W 513 (1937) An ordinance regulating an area of statewide concern is preempted only if (1) the legislature has expressly withdrawn the power of municipalities to act, (2) the ordinance logically conflicts with state legislation, (3) the ordinance defeats the purpose of state legislation, or (4) the ordinance violates the spirit of state legislation. *Anchor Sav & Loan Ass'n,* 120 Wis.2d at 397, 355 N W.2d 234.

¶ 19 Kester contends that the Ordinance defeats the purpose and violates the spirit of the state's scheme to reassimilate sex offenders into society and protect public safety, *see* WIS. ADMIN. CODEE § DOC 328 04(1) (Dec 2006), by minimizing the population density of sex ***349** offenders, *see* WIS STAT § 301 03(19) Accepting Kester's contention as to the purpose and spirit of the state's laws, the Ordinance is not demonstrably contrary to these goals ****718** The purpose of the Ordinance is to reduce the risk of reoffense by child sex offenders *See* SMMC § 23 167–1. Such a purpose advances both the reassimilation of sex offenders into the larger community and the protection of the public Kester has not shown that the Ordinance defeats the purpose or violates the spirit of the state laws regulating child sex offenders. Accordingly, we find that the Ordinance is not preempted by state law

The Ordinance Does Not Violate Kester's Constitutional Protections Against Double Jeopardy and Ex Post Facto Laws

16 ¶ 20 Lastly, Kester contends that the Ordinance violates his right to be free from additional punishment under the Double Jeopardy and the Ex Post Facto Clauses of the United States and Wisconsin Constitutions The relevant protection provided by the Double Jeopardy Clause is the right of a criminal defendant to be free from multiple punishments for the same offense *See State v Carpenter,* 197 Wis.2d 252, 263, 541 N W.2d 105 (1995) The relevant protection provided by the Ex Post Facto Clause prevents the government from increasing the punishment for a crime after its commission. *Id.* at 273, 541 N W 2d 105

17,18 ¶ 21 In any challenge to an ordinance on double jeopardy and ex post facto grounds, the threshold question is whether the ordinance is punitive, as both clauses apply only to punitive laws. **350 State v Rachel,* 2002 WI 81, ¶ 22, 254 Wis.2d 215, 647 N.W.2d 762. Whether an ordinance may be considered punitive is an issue of law that we review independently. *State v McMaster,* 206 Wis.2d 30, 36, 556 N.W.2d 673 (1996).

19,20 ¶ 22 We employ a two-part "intent-effects" test to answer whether a law applied retroactively is punitive and, therefore, an unconstitutional violation of the Double Jeopardy and Ex Post Facto Clauses. *See Rachel,* 254 Wis.2d 215, ¶¶ 39–40, 42, 647 N.W.2d 762. First, we look at the intent of the legislative body in creating the law. *See Smith v. Doe,* 538 U.S. 84, 92, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003). If we find the intent was to impose punishment, the law is considered punitive and the inquiry ends there. *Id.* If we find that the intent was to impose a civil and nonpunitive regulatory scheme, we must next determine whether the effects of the sanctions imposed by the law are "so punitive ... as to render them criminal." *Rachel,* 254 Wis.2d 215, ¶ 42, 647 N.W.2d 762 (citation omitted). We consider a number of factors in this part of the test, none of which is dispositive to our inquiry. *See Smith,* 538 U.S. at 97, 123 S.Ct. 1140. Only the "clearest proof" will convince us that what a legislative body has labeled a civil remedy is, in effect, a criminal penalty. *Rachel,* 254 Wis.2d 215, ¶ 42, 647 N.W.2d 762 (citation omitted).

21,22 ¶ 23 Determining legislative intent is primarily a matter of statutory construction that asks whether the legislative body, "in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other." *Smith,* 538 U.S. at 93, 123 S.Ct. 1140 (citation omitted). "[C]onsiderable deference must be accorded to the intent as the legislature has stated it." *Id.* Kester argues that the City intended to create a punitive law by referencing the recitals to the Ordinance,in **351* which the City declared that it "places a high priority on maintaining public safety through ... dependency upon laws that deter and punish criminal behavior."[4] We think this one ***719* reference to punishment is outweighed by express language in the Ordinance declaring it to be "a regulatory measure aimed at protecting the health and safety of children in South Milwaukee." SMMC § 23.167–1. This clear statement supports the City's contention that it intended to enact a nonpunitive, civil regulatory scheme and not a punitive law.

¶ 24 Our finding that the City intended the Ordinance to be a nonpunitive, civil regulatory measure aimed at protecting the community may be overcome if the "sanctions" imposed by the ordinance are "so punitive in form and effect as to render them criminal." *See Rachel,* 254 Wis.2d 215, ¶ 42, 647 N.W.2d 762 (citation omitted). We conclude that they are not. Convictions have consequences. *See Smith,* 538 U.S. at 103, 123 S.Ct. 1140. Just because one of these consequences is a legislative restriction based on an offender's status does not make it punitive. *See State v. Thiel,* 188 Wis.2d 695, 704–05, 524 N.W.2d 641 (1994). A mere connection to criminal activity is not sufficient to render an ordinance punitive. *Rachel,* 254 Wis.2d 215, ¶ 58, 647 N.W.2d 762.

¶ 25 The United States Supreme Court has articulated a list of nonexhaustive factors to be considered in determining whether a sanction is punitive in nature, *see Kennedy v. Mendoza–Martinez,* 372 U.S. 144, 168–69, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963), for purposes of double jeopardy and ex **352* post facto challenges, *see Smith,* 538 U.S. at 97, 123 S.Ct. 1140. Kester argues four of these factors are present: (1) the Ordinance involves an affirmative disability or restraint, (2) the Ordinance's restrictions historically have been regarded as punishment, (3) the Ordinance's operation will promote retribution and deterrence, and (4) the Ordinance is excessive in relation to its nonpunitive purpose. *See id.* at 97, 102, 123 S.Ct. 1140. Although we agree that some of the factors are present to a degree, Kester has not provided the "clearest proof" that the Ordinance is punitive, and therefore, his double jeopardy and ex post facto challenges fail.

23 ¶ 26 We start by considering whether the Ordinance constitutes an affirmative disability or restraint We agree with Kester that the Ordinance imposes restraints upon where Kester may live within the City of South Milwaukee But we also state the obvious "[N]ot all forms of restraint are equivalent to punishment." *Rachel,* 254 Wis 2d 215, ¶ 47, 647 N W 2d 762 Minor and indirect restraints are unlikely to have a punitive effect *Smith,* 538 U S at 100, 123 S Ct 1140 As the Ordinance unquestionably involves affirmative restraints on certain sex offenders, the question for us is whether those restraints are minor and indirect We agree with Kester that they are not. Although there are exemptions for some child sex offenders and the Ordinance leaves areas where offenders may reside, the Ordinance imposes significant affirmative restraints on Kester and other child sex offenders as to where they may live within South Milwaukee The Ordinance constrains Kester and his family from living in a large number of residences in South Milwaukee. These restraints are neither minor nor indirect *See id* The fact that the Ordinance imposes an affirmative restraint on where Kester may ***353*** live, however, does not end our inquiry into whether the effects of the Ordinance are punitive Many civil regulations involve affirmative restraints that are neither minor nor indirect

¶ 27 Kester next argues that the Ordinance's restrictions on where he may live resemble historical punishments of shaming and banishment We disagree Banishment ****720*** involves the permanent expulsion of an offender from an entire community, whereas the Ordinance restricts where certain child sex offenders may reside within South Milwaukee *See Doe v. Miller,* 405 F.3d 700, 719 (8th Cir 2005) Unlike the traditional punishment of shaming, the Ordinance does not hold up a violator for face-to-face humiliation by his or her fellow citizens *See Smith,* 538 U.S. at 98, 123 S.Ct. 1140. Equally unavailing is Kester's contention that the similarities between the restrictions imposed by the Ordinance and restrictions that may accompany probation and parole transform the restrictions into punishment Conditions accompanying probation or parole are not punishment but rather means of rehabilitation. *See Prue v State,* 63 Wis 2d 109, 114, 216 N W 2d 43 (1974)

24 ¶ 28 Kester also argues that the Ordinance is punitive in that it promotes deterrence and retribution, two of the traditional aims of punishment. We concede that the Ordinance has as its primary aim the deterrence of sex crimes against children, but the "mere presence of a deterrent purpose" without more is not enough to make criminal a civil regulation. *See Smith,* 538 U.S. at 102, 123 S.Ct. 1140 (citation omitted). The City's regulation is aimed at deterrence and protection of its citizens, not punishing Kester Furthermore, we do not agree with Kester that the Ordinance is retributive as it is imposed on all child sex offenders without regard to their degree ***354*** of individual dangerousness The City in enacting the Ordinance was not obligated to attempt to define and differentiate the degree of dangerousness of convicted sex offenders. The City's purpose in enacting the Ordinance was to promote the safety of its citizens rather than categorize convicted sex offenders. The intent of the Ordinance is not retributive and any deterrent purpose it serves so as to protect the community is insufficient to constitute punishment

25 ¶ 29 Kester's final argument is that the Ordinance constitutes punishment as the restrictions that it imposes are excessive when compared to its asserted nonpunitive purpose. This last argument is related to the inquiry into "whether the regulatory scheme has a 'rational connection to a nonpunitive purpose ' " *Miller,* 405 F.3d at 721 (quoting *Smith,* 538 U S at 102, 123 S.Ct. 1140) "A statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance." *Smith,* 538 U S at 103, 123 S.Ct 1140. Nor does the measure need to represent "the best choice possible to address the problem [the legislative body] seeks to remedy " *Id.* at 105, 123 S Ct 1140. "The question is whether the regulatory means chosen are reasonable in light of the nonpunitive objective " *Id.*

¶ 30 Kester points to the Ordinance's application to all child sex offenders regardless of their individual circumstances or dangerousness as well as the permanency of the Ordinance's application. We state the obvious All convicted child sex offenders have proven themselves to be dangerous A municipality is not

required to regulate its police powers based upon someone's prognostication as to the future acts of a convicted child sex offender. Kester argues that other municipalities in Wisconsin have enacted less onerous **355* ordinances to show that the City's objectives can be met by less drastic means. That fact may be true but, contrary to Kester's argument, our laws provide that the City may make "reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences." *Id.* at 103, 123 S.Ct. 1140. ***721* Such categorical judgments do not require individual risk assessments to survive challenges on double jeopardy or ex post facto grounds. *See id.* at 104, 123 S.Ct. 1140. Moreover, the City did not have to enact the best measure to reach its aims, only a reasonable one. *See id.* at 105, 123 S.Ct. 1140. While we agree that the Ordinance places burdens upon Kester and other child sex offenders who wish to live in South Milwaukee, we cannot say these restrictions are not reasonable to achieve the City's purpose of protecting against the risk that a child sex offender may reoffend.

¶ 31 Kester fails to offer the "clearest proof" that the Ordinance is a criminal and punitive measure rather than its stated purpose as a civil, nonpunitive regulatory scheme. As such, the City's Ordinance as applied to him does not violate the Double Jeopardy and Ex Post Facto Clauses.

CONCLUSION

¶ 32 We affirm as the Ordinance was properly applied to Kester. Kester has no right under the Ordinance for an individual determination as to whether he poses a risk of reoffending. The Ordinance is not preempted by state law, and the Ordinance as applied to Kester does not violate the Double Jeopardy or Ex Post Facto Clauses of the United States and Wisconsin Constitutions.
Order affirmed.

Footnotes

†
Petition for review filed.
1 All references to the Wisconsin Statutes are to the 2011–12 version unless otherwise noted.
2 "A nuisance is an unreasonable activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or others." *State v. Quality Egg Farm, Inc.*, 104 Wis.2d 506, 517, 311 N.W.2d 650 (1981).
3 Kester focuses on SMMC § 23.167–7, which requires the police chief, upon learning of a violation, to issue a "written determination ... that upon all the facts and circumstances and the Purpose of this Chapter, such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or others."
4 *See* South Milwaukee, Wis., An Ordinance to Create Section 23.167 of the Municipal Code to Provide Regulations Relating to Residency Restrictions for Sex Offenders and Directing Action for Injunctive Relief for Violation Thereof (effective Aug. 30, 2007).

249 F.Supp.3d 951
United States District Court, E.D. Wisconsin.

Franklyn HOFFMAN, Kenneth Derkson, Johnny Wooten, Eric Sanders, Michael O'Connell, Stephen Hart, William Johnson, James Norgaard, and Alton Antrim, Plaintiffs,

v.

VILLAGE OF PLEASANT PRAIRIE, Defendant.

Case No. 16–CV–697–JPS
Signed 04/17/2017

Synopsis

Background: Convicted sex offenders residing in village brought action against village, alleging that ordinance regulating residency of child sex offenders within village violated the Ex Post Facto Clause and the Equal Protection Clause, and seeking declaratory judgment in favor of one sex offender on the issue of whether he had to leave the village Plaintiffs moved for summary judgment.

Holdings: The District Court, J.P Stadtmueller, J., held that:
1 claim seeking money damages was not moot;
2 ordinance violated Ex Post Facto Clause;
3 plaintiffs asserting Equal Protection claim had standing, and
4 ordinance violated equal protection.
Motion granted in part and denied in part.

West Headnotes (18)

1 Federal Courts Nature of dispute; concreteness
Federal Courts Inception and duration of dispute; recurrence; "capable of repetition yet evading review"
District court may only exercise its jurisdiction over live controversies; this requirement applies not only at the start of the litigation, but throughout its entire pendency.
2 Federal Courts Rights and interests at stake
Federal Courts Dismissal or other disposition
An action becomes moot, and must therefore be dismissed, when an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit.
3 Federal Courts Rights and interests at stake
Federal Courts Available and effective relief
A case only becomes moot when it is impossible for a district court to grant any effectual relief whatever to the prevailing party; as long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.
4 Constitutional Law Mootness
Convicted sex offenders' claim seeking money damages, alleging that village ordinance regulating residency of child sex offenders in village violated the Ex Post Facto clause, was not moot, even though village had repealed and replaced original ordinance, which either eliminated or limited effect of allegedly unlawful provisions. U S Const. art. 1, § 10, cl. 1
5 Constitutional Law Sex Offenders
Mental Health Sex offenders
Restrictions imposed by village ordinance regulating residency of child sex offenders in village were not rationally connected to stated purpose of protecting the health and welfare of village's citizens, and thus ordinance violated Ex Post Facto Clause; ordinance limited residency to tiny zone, imposed restrictions

based solely on prior offense, attempted to deter recidivism, prevented any sex offenders from moving into village, and banished all sex offenders in leaseholds without individualized inquiry into risk to community, restrictions were based on conjecture about dangers posed by sex offenders rather than on objective evidence, and ordinance could have had a negative effect on sex offender recidivism and community safety. U S Const art 1, § 10, cl 1

1 Case that cites this headnote

6 Constitutional Law Punishment in general

The Ex Post Facto Clause prohibits retroactive punishment by the government. U.S. Const. art 1, § 10, cl. 1

2 Cases that cite this headnote

7 Constitutional Law Constitutional Prohibitions in General

The Supreme Court requires the clearest proof to override the government's stated intention in an Ex Post Facto case U.S. Const. art. 1, § 10, cl 1

8 Constitutional Law Punishment in general

To assess the punitive nature of a restriction in an Ex Post Facto case, district courts analyze five factors (1) whether the law inflicts what has been regarded in United States history and traditions as punishment, (2) whether the law imposes an affirmative disability or restraint, (3) whether the law promotes the traditional aims of punishment, (4) whether the law has a rational connection to a non-punitive purpose, and (5) whether the law is excessive with respect to this purpose U S Const. art. 1, § 10, cl. 1.

9 Constitutional Law Punishment in general

Under the Ex Post Facto Clause, to avoid an excessive punitive effect, a statute imposing a particularly harsh disability or restraint must allow an individualized assessment, which helps to ensure that a statute's particularly harsh disability or restraint is rationally related to a non-punitive purpose U S Const. art 1, § 10, cl. 1.

10 Federal Civil Procedure Hearing, evidence, and presentation of arguments

The district court will not craft appropriate arguments for a litigant and, particularly in the case of represented parties, will assume that the omission of apparently relevant argument was a strategic choice rather than mere oversight.

11 Constitutional Law Equal Protection

Convicted sex offenders had standing to bring Equal Protection claim against village, alleging that, prior to its amendment, ordinance regulating residency of sex offenders in village violated Equal Protection, even though original ordinance had been repealed and replaced; most of the offenders were subjected to banishment within six months of ordinance's passage, and some offenders suffered stress because they knew they would have to leave village if they ever left their current homes. U.S. Const. Amend. 14.

12 Federal Civil Procedure In general; injury or interest

The standing doctrine requires that a party must actually have a interest in a case to invoke federal jurisdiction.

13 Constitutional Law Similarly situated persons, like circumstances

The Fourteenth Amendment's Equal Protection Clause commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike. U.S. Const. Amend. 14.

14 Constitutional Law Statutes and other written regulations and rules

Laws usually pass muster under the Equal Protection Clause if the classification drawn by the statute is rationally related to a legitimate state interest U.S. Const. Amend. 14.

15 Constitutional Law Sex Offenders

Mental Health Sex offenders

To prove an equal protection claim involving restrictions imposed by village ordinance regulating residency of child sex offenders in villag under rational basis review, convicted child sex offenders were required to show (1) the village intentionally treated them differently from others similarly situated, (2) the village intentionally treated them differently because of their membership in the class to which they

belonged, and (3) the difference in treatment was not rationally related to a legitimate state interest U S Const. Amend. 14

16 Constitutional Law Rational Basis Standard, Reasonableness

In an Equal Protection case applying rational basis review, a law must be upheld if the district court can reasonably conceive of any justification for it U S Const Amend 14

17 Constitutional Law Sex Offenders

Mental Health Sex offenders

Village ordinance which regulated residency of convicted child sex offenders violated the Equal Protection Clause of the Fourteenth Amendment, ordinance made irrational domicile-based distinction between designated offenders, and there was no evidence supporting ordinance's restrictions. U S Const Amend 14

1 Case that cites this headnote

18 Constitutional Law Discrimination and Classification

The bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest in an Equal Protection case U S Const. Amend. 14

Attorneys and Law Firms

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ORDER

J P Stadtmueller, U S District Judge

1. INTRODUCTION

On February 8, 2017, Plaintiffs Franklyn Hoffman ("Hoffman"), Kenneth Derkson ("Derkson"),[1] Johnny Wooten ("Wooten"), Eric Sanders ("Sanders"), Michael O'Connell ("O'Connell"), Stephen Hart ("Hart"), William Johnson ("Johnson"), James Norgaard ("Norgaard"), and Alton Antrim ("Antrim") filed a motion for summary judgment. (Docket # 41) Defendant Village of Pleasant Prairie (the "Village") opposed the motion on March 2, 2017 Plaintiffs replied in support of their motion to March 15, 2017 For the reasons stated below, Plaintiffs' motion must be granted in part [2]

2. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56 provides the mechanism for seeking summary judgment. Rule 56 states that the "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law " Fed. R Civ P 56(a), *see Boss v Castro*, 816 F 3d 910, 916 (7th Cir 2016) A "genuine" dispute of material fact is created when "the evidence is such that a reasonable ***954*** jury could return a verdict for the nonmoving party " *Anderson v Liberty Lobby, Inc* , 477 U S. 242, 248, 106 S Ct 2505, 91 L Ed 2d 202 (1986) The Court construes all facts and reasonable inferences in a light most favorable to the non-movant. *Bridge v New Holland Logansport, Inc* , 815 F 3d 356, 360 (7th Cir 2016)

3. RELEVANT FACTS

The material facts are almost entirely undisputed [3] On April 18, 2016, the Village passed an ordinance regulating residency for child sex offenders within its borders (the "Ordinance"). Plaintiffs initiated the instant suit on June 9, 2016, challenging its constitutionality The Ordinance prohibited child sex offenders, called "designated offenders" (hereinafter "Designated Offenders"), from residing in the Village within 3,000 feet of a "prohibited location." "Prohibited locations" included "[a]ny school,

licensed day-care center, park, trail, playground, place of worship, athletic field used by Minors, or any other placed designated by the Village as a place where Minors are known to congregate." (Docket # 43–1 at 2). The Ordinance also prevented Designated Offenders from moving into the Village unless they were already domiciled in the Village at the time of their most recent offense. Designated Offenders were excluded from any potential violation of the Ordinance if they resided continuously in a home prior to and after its effective date. This provision was limited by a ban on renewing rental agreements with Designated Offenders which would extend for more than six months beyond the Ordinance's effective date.

The Ordinance further restricted where Designated Offenders could live with respect to each other; offenders were banned from residing within 500 feet of each other. The Ordinance applied to all Designated Offenders without any inquiry into the danger any individual offender posed to the community. It did, however, contain a grandfather clause. The grandfather clause allowed Designated Offenders to stay in their residence if a "prohibited location" was established near them after they took residence. It also permitted them to live with their close family members, provided those family members had resided in the otherwise prohibited area for at least two years.

The Court recognizes that this explanation is somewhat confusing when stated in prose. To better understand the effect of the Ordinance on various Designated Offenders, the Court has prepared the following chart:
*955

Nature of Offender	Restriction Imposed
1) Domiciled in the Village at time of most recent offense 2) Lived in the Village when Ordinance was passed	None, as long as the offender's home complied with the distance-related restrictions
1) Not domiciled in the Village at time of most recent offense 2) Not domiciled in Village when Ordinance was passed	Permanently banned from the Village
1) Not domiciled in the Village at time of most recent offense 2) Lived in the Village when Ordinance was passed 3) Rented property that did not comply with distance restrictions	Must leave the Village by October 18, 2016, and may never return
1) Not domiciled in the Village at time of most recent offense 2) Lived in the Village when Ordinance was passed 3) Owned home or lived with family	May remain in that property, but may not move to another home in the Village. If the offender leaves their home for more than thirty days, they may never return.

See (Docket # 45 at 4–5).

In passing the Ordinance, the Village prepared a map showing its projected effect on Designated Offender residency. The map revealed that more than ninety percent of the Village would be off-limits to

Designated Offenders under the Ordinance. The remaining ten percent was largely non-residential. Moreover, the interaction between the 3,000 foot prohibited zone and the rule against Designated Offenders living near one another further limited the possible dwelling places. Most of the Village's low-income housing, which is all that most of these plaintiffs could afford, was excluded.

When enacting the Ordinance, the Village did not obtain or consider any studies or data regarding the safety risk of allowing Designated Offenders to live near the various "prohibited locations" identified above, or near one another. In fact, the Village's administrator, Michael Pollocoff ("Pollocoff"), testified that turning child sex offenders into outcasts can create "more deleterious impacts." (Docket # 45 at 6). The Village also had no evidence that Designated Offenders domiciled outside the Village at the time of their last offense posed a greater safety risk than those who were. Pollocoff stated that the Ordinance's purpose and goal was to reduce the number of child sex offenders living in the Village.

*956 All Plaintiffs but Norgaard,[4] O'Connell,[5] and Hoffman[6] were not domiciled in the Village at the time of their offense, and rented their abodes, and so fell into the third category from the chart above.[7] Each was told that, in light of the Ordinance's passage, they had to leave the Village by October 18, 2016. Plaintiffs were variously notified of their need to vacate by a letter from the Village's Chief of Police, by conversations with their probation officers, or by conversations with other Designated Offenders. Each Plaintiff has suffered stress as a result of the threat posed by the Ordinance, the difficulties in attempting to secure new housing, and fear of the consequences of homelessness.

The Ordinance was repealed, and a new one created in its place, on September 6, 2016 (the "Amended Ordinance"). The Amended Ordinance lowered the 3,000 foot prohibited zone to 1,500 feet. This would still cut Designated Offenders out of over sixty percent of the Village's land area and seventy-five percent of its residences. The restriction on Designated Offenders living near each other was removed entirely, as was the limit on renewing leases for Designated Offenders living in a prohibited zone. Finally, the Amended Ordinance stated that it did not apply to a Designated Offender whose latest conviction was ten or more years prior to them taking residence in the Village.

4. ANALYSIS

Plaintiffs' Second Amended Complaint advances three causes of action. Count One alleges that the Ordinance violates the Ex Post Facto Clause in Article I of the Constitution, because "it makes more burdensome the punishment imposed for offenses committed prior to enactment of the Ordinance and it applies retroactively[.]" (Docket # 30 at 22). Plaintiffs seek an injunction against its enforcement and money damages on Count One. *Id.* at 23. Count Two states that the Ordinance also violates the Equal Protection Clause of the Fourteenth Amendment because it differentiates between Designated Offenders who were or were not domiciled in the Village at the time of their most recent offense, without a rational basis for doing so. *Id.* at 23–24. Plaintiffs also seek injunctive and monetary relief on Count Two. *Id.* at 24. Finally, Count Three seeks a declaratory judgment in favor of O'Connell on the issue of whether he had to leave the *957 Village. *Id.* at 24–25; *see supra* note 5. Plaintiffs' instant motion requests judgment on Counts One and Two as to liability only.[8] The Court addresses each claim in turn.

4.1 Ex Post Facto

1,2,3 Initially, the Village contends that Plaintiffs' ex post facto claim is mooted by its repeal of the Ordinance. This Court may only exercise its jurisdiction over live controversies. *Campbell–Ewald Co. v. Gomez*, —— U.S. ——, 136 S.Ct. 663, 669, 193 L.Ed.2d 571 (2016). This requirement applies not only at the start of the litigation, but throughout its entire pendency. *Id.* An action becomes moot, and must therefore be dismissed, when "an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit." *Id.* (quotation omitted). A court must take care not to paint over a lawsuit's claims with a broad brush, however. A case only becomes moot "when it is impossible for a court to grant any effectual relief whatever to the prevailing party. As long as the parties have a concrete interest,

however small, in the outcome of the litigation, the case is not moot." *Id.* (citations and quotations omitted).

4 The Village contends that Plaintiffs' claims became moot on September 6, 2016, approximately three months after this action was filed. On that date, the original Ordinance they complained-of in the Second Amended Complaint was repealed and replaced with the Amended Ordinance, which either eliminated or limited the effect of the allegedly unlawful provisions. Plaintiffs concede that this renders moot their requests for injunctive relief. Enacting the Amended Ordinance does not, however, do anything to address Plaintiffs' requests for money damages. *Campbell–Ewald* (as well as the Village's own citations) stands for the proposition that Plaintiffs' damages claim, and thus the ex post facto claim as a whole, remains a live controversy. *Fed'n of Adver. Indus. Reps., Inc. v. City of Chicago*, 326 F.3d 924, 929 (7th Cir. 2003) ("[A] defendant's change in conduct cannot render a case moot so long as the plaintiff makes a claim for damages."). The Village's mootness argument is without merit.

5,6 The Village next asserts that the Ordinance did not actually violate the Ex Post Facto Clause because it did not impose a punishment on Plaintiffs. The Clause prohibits retroactive punishment by the government, and as applied here, it restricts how far a governmental entity can go in limiting the rights of sex offenders. *Smith v. Doe*, 538 U.S. 84, 92, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003). The *Smith* court began its ex post facto analysis with two questions. First, did the government, in enacting the restriction, intend to "establish civil proceedings," or impose punishment? *Id.*(internal quotation marks omitted). If the government intended to punish, the law violates the Ex Post Facto Clause and the inquiry ends there. *Id.* The Ordinance's stated purpose is "not to impose a criminal penalty" but to instead protect the health and welfare of the Village's ***958** citizens. (Docket # 43–1 at 1). The Court must defer to that statement of intent. *Smith*, 538 U.S. at 92–93, 123 S.Ct. 1140 ("[C]onsiderable deference must be accorded to the intent as the legislature has stated it.").

7,8 Nevertheless, even if a law purports to be civil in nature, the Court "must further determine whether the statutory scheme is "so punitive either in purpose or effect as to negate [the Village's] intention to deem it civil." *Id.* at 92, 123 S.Ct. 1140(quotations omitted). The Supreme Court requires "the clearest proof" to override the government's stated intention. *Id.* To assess the punitive nature of a restriction, courts analyze five factors:

> (1) Does the law inflict what has been regarded in our history and traditions as punishment?
>
> (2) Does it impose an affirmative disability or restraint?
>
> (3) Does it promote the traditional aims of punishment?
>
> (4) Does it have a rational connection to a non-punitive purpose?
>
> (5) Is it excessive with respect to this purpose?

Does # 1–5 v. Snyder, 834 F.3d 696, 701 (6th Cir. 2016) (citing *Smith*, 538 U.S. at 97, 123 S.Ct. 1140).

The Village's argument on this point is brief, conclusory, and fails to meaningfully address any of these factors. It instead gestures at a few cases which it contends have ruled in its favor on this issue, and asks the Court to evaluate and follow those decisions. The Village is mistaken on the law and the Court's duties. The most relevant decisions from across the nation reveal that the Ordinance is nigh unprecedented in its punitive effect. The Court will not distinguish those opinions where the Village has made no effort to do so itself.

As to the first factor, the Ordinance banished Plaintiffs from the Village. Banishment is a traditional form of punishment, and historically "involved the complete expulsion of an offender from a socio-political community." *Shaw v. Patton*, 823 F.3d 556, 566 (10th Cir. 2016). Unlike many other laws restricting sex offender residency, the Ordinance did not simply limit where such people could live. The Ordinance prevented any sex offenders from moving into the Village and, more importantly, required all sex offenders in leaseholds to leave within six months after its passage. This is, in the Court's view, nothing short of affirmative banishment. *Id.* at 567–68(residency provision did not resemble historical banishment because it only limited sex offender residency, but did not expel them entirely); *Doe v. Miller*, 405 F.3d 700, 719 (8th Cir. 2005) (same). Not all Plaintiffs are in the same position on this issue, however. Norgaard, O'Connell, and Hoffman were not (properly) subject to the banishment provision of the Ordinance. However, as discussed below, this difference does not change the outcome on this claim.

Even had it tried, the Village could not reasonably contest the second factor. The Ordinance imposed severe restraints on Designated Offenders, limiting their residence to ten percent of the Village's land area, an area which is itself largely non-residential. *See Doe v. Miami–Dade County, Fla.*, 846 F.3d 1180, 1185 (11th Cir. 2017) (this inquiry focuses on the " 'how the effects of the [Ordinance] are felt by those subject to it,' " and these offenders alleged homelessness as a result of the county's residency ordinance) (quoting *Smith*, 538 U.S. at 99–100, 123 S.Ct. 1140). The third factor is likewise present, though it is of limited importance because punishment goals often overlap legitimate civil regulatory goals. *Snyder*, 834 F.3d at 704. Still, the Ordinance advances the traditional ***959** punishment aims of incapacitation, in keeping Designated Offenders segregated to tiny zones of the community; retribution, by imposing its restrictions based solely on Plaintiffs' prior offense conduct; and deterrence, in attempting to keep Designated Offenders away from children to deter recidivism. *Id.*

9 The fourth and fifth factors are usually considered together, for the less rational a restriction's connection to its stated purpose, the more excessive it will be in addressing that purpose. *See Smith*, 538 U.S. at 104–05, 123 S.Ct. 1140; *Snyder*, 834 F.3d at 704–05; *Miller*, 405 F.3d at 721–723. This is the most important consideration in the ex post facto analysis. *Smith*, 538 U.S. at 102, 123 S.Ct. 1140. Further, "to avoid a[n] [excessive] punitive effect, a statute imposing a particularly harsh disability or restraint must allow an individualized assessment. An individualized assessment helps to ensure that a statute's particularly harsh disability or restraint is rationally related to a non-punitive purpose." *Shaw*, 823 F.3d at 575; *Weems v. Little Rock Police Dep't*, 453 F.3d 1010, 1017 (8th Cir. 2006) ("Unlike the Iowa law [at issue in *Miller*], the Arkansas statutory plan calls for a particularized risk assessment of sex offenders, which increases the likelihood that the residency restriction is not excessive in relation to the rational purpose of minimizing the risk of sex crimes against minors.").

Decisions from other circuits provide a useful contrast to the Ordinance. In *Miller*, expert testimony was received on the effect of a 2,000-foot residency restriction on sex offender recidivism. *Miller*, 405 F.3d at 722–23. While this testimony was not definitive as to the propriety of that distance as compared to any others, the Eighth Circuit held that it supplied a sufficient rational basis connected to the legislature's non-punitive purpose. *Id.* In *Miami–Dade*, the subject ordinance established a 2,500-foot exclusion zone for schools, with exceptions when "(1) [t]he sexual offender or sexual predator established a residence prior to the effective date of th[e] [O]rdinance; (2) [t]he sexual offender or sexual predator was a minor when he or she committed the sexual offense and was not convicted as an adult; and (3) [t]he school was opened after the sexual offender or sexual predator established the residence." *Miami–Dade*, 846 F.3d at 1183 (internal quotation marks omitted). The *Miami–Dade*plaintiffs alleged that this ordinance violated the Ex Post Facto Clause because it did not include an individualized risk assessment, it applied to an offender for life, and was passed without any evidence connecting the restriction to an improvement on safety or recidivism concerns. *Id.* at 1185–86. The Eleventh Circuit found that these assertions stated an ex post facto cause of action. *Id.* Finally, *Duarte* highlights the importance of an efficacious grandfather clause, which in that case allowed offenders to stay in their current homes after the subject ordinance was

passed. *Duarte v. City of Lewisville*, 136 F.Supp.3d 752, 781–82 (E.D. Tex. 2015). The *Duarte* ordinance also contained "multiple affirmative defenses that, if argued and proven, exempt the child sex offender from the residency restrictions." *Id.* at 782.[9]

***960** The Ordinance goes further than any these examples. The Ordinance bans Designated Offenders from the Village without any individualized inquiry into their risk to the community. In a similar vein, it did not offer any method for a Designated Offender to obtain an exemption, even in limited circumstances. Like the *Miami–Dade* ordinance, the Ordinance's banishment applies to Designated Offenders for life. Unlike *Duarte*, the Ordinance's grandfather clause was of limited help to Plaintiffs, because for most of them, it only permitted them to remain until October 2016. Most importantly, the Village has admitted that the Ordinance was based on its own conjecture about the dangers posed by sex offenders. No data or studies on the matter were considered in passing the Ordinance.

The lack of evidence eliminates the possibility that the Village's action was rational. In *Snyder*, the Sixth Circuit faced a comprehensive sex offender registration and residency statute. *Snyder*, 834 F.3d at 697–98. The court found that the statute was not rationally related to the purpose of reduced sex offender recidivism and public safety. *Id.* at 704–05. Though the Supreme Court in *Smith* stated that recidivism rates among sex offenders are "frightening and high," the *Snyder* court found that support for the proposition was lacking in empirical studies. *Id.* at 704. It specifically noted that "nothing ... in the record suggests that the residential restrictions have any beneficial effect on recidivism rates." *Id.* at 705. *Snyder* found no evidence that "the difficulties the statute imposes on registrants are counterbalanced by any positive effects. Indeed, Michigan has never analyzed recidivism rates despite having the data to do so." *Id.*

The Village fell into the same trap as the Michigan legislature. The Village could have sought objective evidence to support the Ordinance's severe restrictions but chose not to.[10] Plaintiffs were required to come forward with "the clearest proof" that the Ordinance was intended as punishment. *Smith*, 538 U.S. at 92, 123 S.Ct. 1140. If the Village had even a sliver of factual material to support the stated goals of the Ordinance, the outcome of this claim would likely be different. As it stands, however, the Court has no choice but to find that the restrictions imposed by the Ordinance are not rationally connected to its purposes.

***961** 10 The Court concludes that, in balancing the *Smith* factors, Plaintiffs have produced sufficient proof that the Ordinance's stated non-punitive purpose is overborne by its punitive effects. The Ordinance therefore violated the Ex Post Facto Clause and Plaintiffs are entitled to summary judgment on that claim. This result is clearly true for the plaintiffs who were subject to banishment under the Ordinance, namely Derkson, Wooten, Sanders, Hart, Johnson, and Antrim. The Ordinance would not have necessarily banished Hoffman, O'Connell, and Norgaard, for various reasons. *See supra* notes 3–5. As to those three, the lack of banishment makes this case much closer to the others cited above, where the law in question withstood Ex Post Facto Clause review. The Court has not differentiated between these sets of plaintiffs, however, because the Village has not argued that it should. The Court will not craft appropriate arguments for a litigant and, particularly in the case of represented parties, will assume that the omission of apparently relevant argument was a strategic choice rather than mere oversight. *John v. Barron*, 897 F.2d 1387, 1393 (7th Cir. 1990) ("This court is not obligated to research and construct legal arguments open to parties, especially when they are represented by counsel as in this case."); *Gold v. Wolpert*, 876 F.2d 1327, 1333 (7th Cir. 1989).

4.2 Equal Protection

11,12 The Village first argues that Plaintiffs lack standing to pursue an equal protection claim. The standing doctrine requires that a party must actually have a interest in a case to invoke federal jurisdiction. *Lujan v Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

Though there are many nuances to standing, its application here is relatively simple. As raised by the Village, the standing doctrine requires that Plaintiffs must have suffered a concrete injury and favorable decision in the case must offer redress for their injury *Id.* at 560–61, 112 S.Ct. 2130. The Village argues that Plaintiffs were grandfathered into the Amended Ordinance, and with the repeal of the original Ordinance, they now lack standing to maintain an equal protection claim.

The Village's argument misses the mark in two respects. First, as with the mootness issue, the Village focuses on the ameliorative effect of the Amended Ordinance. This is not the relevant inquiry. Plaintiffs have standing to remedy a past wrong, namely the constitutionally violative original Ordinance, regardless of whether they are suffering an injury today. Second, even when one's focus is properly directed to the original Ordinance, Plaintiffs were not grandfathered in as the Village suggests. As discussed above, most of the plaintiffs were subject to banishment within six months of the Ordinance's passage. Plaintiffs further argue that O'Connell and Hoffman suffered stress because they knew they would have to leave the Village if they ever left their current homes. As before, the Village does not differentiate between each set of plaintiffs. The Court finds, then, that all Plaintiffs but Norgaard have standing because they suffered injury by way of the Ordinance. Norgaard is different because Plaintiffs do not attempt to argue that he suffered a violation of his equal protection rights. (Docket # 48 at 4–5). The Court must, therefore, deny summary judgment to him on this claim.

13,14 The Village next attacks the substance of Plaintiffs' equal protection claim. The Fourteenth Amendment's Equal Protection Clause "commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be ***962** treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985) (quotation omitted). Usually, laws pass muster under the Equal Protection Clause "if the classification drawn by the statute is rationally related to a legitimate state interest." *Id.* at 440, 105 S.Ct. 3249. However, when a statute burdens a person's fundamental constitutional rights, courts apply a higher level of scrutiny. *See Atty. Gen. of N.Y. v. Soto–Lopez*, 476 U.S. 898, 904, 106 S.Ct. 2317, 90 L.Ed.2d 899 (1986).

15,16 The parties dispute whether Plaintiffs are members of a protected class, such that the Court would need to give increased scrutiny to the Ordinance. The Court need not wade into that fray, as the Ordinance fails to pass even the lesser threshold of rationality. To prove an equal protection claim under rational basis review, Plaintiffs must show: "(1) the [Village] intentionally treated [them] differently from others similarly situated, (2) the [Village] intentionally treated [them] differently because of [their] membership in the class to which [they] belonged, and (3) the difference in treatment was not rationally related to a legitimate state interest." *Smith v City of Chicago*, 457 F.3d 643, 650–51 (7th Cir. 2006). "Under this lenient standard," the Seventh Circuit instructs, a law "must be upheld if [the Court] can reasonably conceive of any justification for it." *Shaw v. Smith*, 206 F. Fed.Appx. 546, 548 (7th Cir. 2006).

17 Plaintiffs contend that the Ordinance violates their equal protection rights because it treats certain Designated Offenders differently from others without reason. Those in the first chart category, who were domiciled in the Village at the time of their last offense, were allowed to remain in the Village. Those in the other three chart categories, who were not so domiciled, were variously blocked from moving into the Village, compelled to leave in a short time frame, or forced to remain in their current home forever if they wished to stay in the Village. The Village has admitted that it has no evidence that the difference between these groups—domicile at the time of their last offense—has any bearing on their safety risk to the community.

The Village makes no attempt to address this claim. Instead, it appears to believe that Plaintiffs advance an equal protection claim based on their status as sex offenders versus non-sex offenders. The Village states its position as follows "The Village of Pleasant Prairie certainly has a rational basis for protecting

children against the risks of recidivism of convicted sex offenders." (Docket # 46 at 12). This is not the relevant question, and because of its misunderstanding of Plaintiffs' claim, the Village offers almost no relevant argument in opposition to the actual claim presented.

18 Even so, the Court must uphold a law if it "can reasonably conceive of any justification for it." *Shaw*, 206 F. Fed.Appx. at 548. Thus, the Court would likely be compelled to find the Ordinance constitutional if the Village had offered any evidence providing such a justification, even as late as its briefing on the instant motion. It did not, and this failure leaves the Court no choice but to conclude that the Ordinance violated Plaintiffs' equal protection rights in making an irrational domicile-based distinction between Designated Offenders. This comports with the purpose of the Equal Protection Clause. The "bare ... desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973). In light of Pollocoff's comments, and the lack of evidence supporting the Ordinance's restrictions, it appears this is precisely what motivated the Village's action.

963* **5. CONCLUSION

In light of the foregoing, the Court grant Plaintiffs' request for summary judgment as to the liability elements of Counts One and Two of their Second Amended Complaint, for all of the plaintiffs save Norgaard. Norgaard is entitled to summary judgment on Count One but not Count Two. Plaintiffs' damages on those counts will be determined by the jury. The Court treats Plaintiffs' claims for injunctive relief as abandoned. This matter remains set for a pretrial conference on May 9, 2017, and a jury trial beginning on May 15, 2017.

Accordingly,

IT IS ORDERED that Plaintiffs' motion for summary judgment (Docket # 41) be and the same is hereby **GRANTED in part** and **DENIED in part** in accordance with the terms of this Order; and

IT IS FURTHER ORDERED that Plaintiffs' motion to file an oversized brief (Docket # 44) be and the same is hereby **GRANTED**.

Footnotes

1 Plaintiffs spell the name "Dirkson" in their Second Amended Complaint, (Docket # 30 at 1, 9–11), and "Derkson" in their summary judgment materials, (Docket # 42 at 13–15). The Court will use "Derkson," the name he signed to his affidavit, (Docket # 43–8 at 3), and amend the case caption accordingly.

2 Plaintiffs also requested leave to file an oversized brief. (Docket # 44). Though much of the excess of the brief was ultimately unnecessary, the Court will nevertheless grant the request.

3 The facts discussed below are drawn from the parties' respective factual briefs and responses thereto unless otherwise noted. (Docket # 45 and # 49). The Court further notes that the Village raises a number of "disputes" in its response to Plaintiffs' statement of facts. *See, e.g.*, (Docket # 45 at 8). The "disputes" are inappropriate because they cite no evidence, and are generally pure legal argument, which is reserved for the parties' legal memoranda, not factual briefing. The Court has ignored those attempted "disputes."

4 Norgaard is the manager of the King's Motel, where a number of other designated offenders also live. He did not fear the Ordinance because he was domiciled in the Village at the time he committed his last offense, and the other offenders in the Motel would be moving away, eliminating any conflict with the 500-foot restriction. Norgaard thus fell into the first chart category.

5 O'Connell lived at a home owned entirely by his girlfriend and did not pay rent. He was thus exempt, per the fourth chart category, from having to move out of the Village, so long as he did not leave the home. He was nonetheless told that he had to leave the Village. The misunderstanding was corrected during the course of this litigation, specifically by a letter sent to O'Connell on August 4, 2016.

6 Hoffman lived with his mother rent-free, and so fell into the fourth chart category. When his mother decided to sell her home and move to senior housing, Hoffman knew the Ordinance would prevent him from staying in the Village.

7 This fact is undisputed as to Hoffman, Sanders, Antrim, and Wooten. It is not explicitly stated as to Derkson or Johnson, but the other facts related to those plaintiffs suggest that they to are covered by the third chart category. In any event, it is undisputed that Derkson and Johnson were told that they were subject to the Ordinance and would have to leave the Village.

8 Plaintiffs' opening brief discusses their entitlement to compensatory damages for the stress and fear they suffered while the Ordinance remained in force. Confusingly, the brief does not explain why Plaintiffs did so; did Plaintiffs want the Court to award damages at the summary judgment stage? The Village believed so, and responded that Plaintiffs' evidence does not adequately support their claim for damages at this stage. Plaintiffs' reply clarifies that they do not seek an award of damages now, but wish to have their damages evaluated by the jury at trial. With that clarification, the propriety of Plaintiffs' damages becomes a non-issue. Plaintiffs could have prevented confusion for all involved by appropriately titling their motion as one for partial summary judgment.

9 The Village cites two Wisconsin appellate court opinions upholding sex offender residency restrictions. Neither case has much persuasive value. *Menomonee Falls v. Ferguson* decided whether an offender was protected by an ordinance's grandfather clause, and said nothing of the constitutionality of the ordinance. *See generally* 334 Wis.2d 131, 799 N.W.2d 473 (App. 2011). *City of South Milwaukee v. Kester* actually addressed the ex post facto issue. 347 Wis.2d 334, 830 N.W.2d 710 (App. 2013). *Kester* found that the ordinance passed muster under the Ex Post Facto Clause because it did not banish the plaintiff sex offender and, even without an individual risk assessment, the city was entitled to make a reasonable categorical judgment that all sex offenders are dangerous to the community. *Id.* at 719–21. *Kester* is unpersuasive for two reasons. First, the Ordinance is different from *Kester*'s ordinance because it includes an expulsion provision. Second, in line with the above-cited federal precedent, this Court disagrees with *Kester* to the extent that a broad, evidence-free assumption about sex offenders (*Kester* mentions no data or studies on the dangerousness of such persons in the community) is sufficient to make a regulation non-punitive.

10 In fact, the Village apparently had evidence that the Ordinance could be counterproductive. Pollocoff stated that the Ordinance could have a negative effect on sex offender recidivism and community safety by making them outcasts. *Snyder* discussed the same issue:

> In fact, one statistical analysis in the record concluded that laws such as SORA actually *increase* the risk of recidivism, probably because they exacerbate risk factors for recidivism by making it hard for registrants to get and keep a job, find housing, and reintegrate into their communities. *See* [J.J. Prescott & Jonah E. Rockoff, *Do Sex offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & Econ. 161 (2011)].
>
> *Snyder*, 834 F.3d at 704–05 (emphasis in original).

306 F.Supp.3d 1086
United States District Court, D. Minnesota.

Thomas Wayne EVENSTAD, Plaintiff,

v.

CITY OF WEST ST. PAUL, Jenny Halvorson, John Does 1–10, and Jane Does 1–5, Defendants.

Civil No. 17–4067 (JRT/DTS)
Signed 01/25/2018

Synopsis

Background: Sex offender brought action against city, alleging that its ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes violated Ex Post Facto Clause Sex offender moved for preliminary injunction.

Holdings: The District Court, John R. Tunheim, Chief Judge, held that
1 sex offender was likely to prevail on the merits,
2 sex offender could suffer irreparable harm absent injunction;
3 balance of harms favored sex offender;
4 public interest disfavored injunction; but
5 District Court would waive injunction's bond requirement.

Motion granted.

West Headnotes (26)

1 Civil Rights Property and housing
Civil Rights Criminal law enforcement; prisons
District Court would grant preliminary injunction against city ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes, in sex offender's action alleging that ordinance violated Ex Post Facto Clause, even though public interest disfavored grant of the injunction; sex offender was likely to prevail on merits and could suffer irreparable harm absent injunction, and balance of harms favored sex offender. U.S. Const. art. 1, § 10, cl. 1.
2 Injunction Preservation of status quo
Injunction Equitable considerations in general
At base, the question in determining whether to issue a preliminary injunction is whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined.
3 Civil Rights Property and housing
Civil Rights Criminal law enforcement; prisons
Sex offender was likely to prevail on merits of action alleging that city ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes was criminal law in violation of Ex Post Facto Clause, as factor favoring grant of preliminary injunction against ordinance, although nature of ordinance had not been regarded in history and traditions as punishment and ordinance did not promote traditional aims of punishment, where ordinance lacked rational connection to nonpunitive purpose, was excessive in relation to its stated purpose, and imposed affirmative disability or restraint. U.S. Const. art. 1, § 10, cl. 1
4 Injunction Equitable considerations in general
In balancing the equities in determining whether to issue a preliminary injunction, no single factor is determinative
5 Injunction Likelihood of success on merits

In determining whether to issue a preliminary injunction, likelihood of success must be examined in the context of the relative injuries to the parties and the public
6 Injunction Likelihood of success on merits
Likelihood of success on the merits is the most significant factor in considering a preliminary injunction.
7 Civil Rights Property and housing
Civil Rights Criminal law enforcement, prisons
City ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes had been enacted pursuant to presumptively reasoned democratic processes, and thus sex offender seeking preliminary injunction against ordinance in action alleging that ordinance violated Ex Post Facto Clause bore burden of showing he was likely to prevail on merits, members of city government had assisted in developing ordinance, and ordinance had been read twice at city council meetings with documents circulated before first reading, passed by unanimous vote of council, signed by prior mayor, and enforced by current mayor U S. Const. art. 1, § 10, cl. 1.
8 Injunction Likelihood of success on merits
The likelihood of success factor for a preliminary injunction ordinarily requires the moving party to prove only a fair chance of prevailing, which may mean something less than fifty percent.
9 Injunction Injunctions Against Enforcement of Laws and Regulations
When the matter at issue is a law that was the product of government action based on presumptively reasoned democratic processes, the likelihood of success factor for a preliminary injunction requires the moving party to show that they are likely to prevail on the merits.
10 Injunction Injunctions Against Enforcement of Laws and Regulations
With a city ordinance against which a preliminary injunction is sought, the question in determining the applicable likelihood of success standard is to what extent the challenged action represents the full play of the democratic process.
11 Constitutional Law Registration
Sex offender registration laws do not violate the Ex Post Facto Clause if they establish civil proceedings rather than criminal punishment. U S. Const. art. 1, § 10, cl. 1
12 Constitutional Law Penal laws in general
Constitutional Law Punishment in general
In determining whether a law is civil or criminal under the Ex Post Facto Clause, five factors, though neither exhaustive nor dispositive, are relevant to analysis of whether a law is punitive in effect. courts must ask whether, in its necessary operation, the regulatory scheme (1) has been regarded in history and traditions as a punishment, (2) imposes an affirmative disability or restraint, (3) promotes the traditional aims of punishment, (4) has a rational connection to a nonpunitive purpose, or (5) is excessive with respect to this purpose. U.S. Const. art. 1, § 10, cl 1
13 Constitutional Law Sex Offenders
Mental Health Sex offenders
City did not intend ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes to impose punishment, as factor disfavoring ordinance being a criminal law under Ex Post Facto Clause; although legislative record did not show consideration of specific risks posed by offenders who victimized adults or dangers posed to vulnerable adults, it showed generalized discussion of safety risks posed by offenders, and although ordinance was triggered solely by underlying criminal offenses and could result in criminal misdemeanor, it was situated in city code's general regulations and stated its purpose was to serve city's "compelling interest" to promote, protect, and improve health, safety, and welfare of citizens, with particular focus on children and vulnerable individuals U S Const. art 1, § 10, cl. 1
14 Statutes Language and intent, will, purpose, or policy
Statutes Design, structure, or scheme
To discern legislative intent, courts consider a statute's text and its structure to determine the legislative objective
15 Constitutional Law Penal laws in general

Constitutional Law Punishment in general
In determining whether a law is civil or criminal under the Ex Post Facto Clause, when asking whether the legislature intended to impose punishment, considerable deference must be accorded to the intent as the legislature has stated it. U S Const. art. 1, § 10, cl 1
16 Constitutional Law Sex Offenders
Mental Health Sex offenders
Nature of city ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes had not been regarded in history and traditions as punishment, as factor disfavoring ordinance being a criminal law under Ex Post Facto Clause, where ordinance did not prohibit sex offenders from being present in restricted areas, only from living in them. U.S. Const art 1, § 10, cl 1.
17 Constitutional Law Sex Offenders
Mental Health Sex offenders
City ordinance restricting sex offenders from residing, but not being present, within 1200 feet of schools, day care centers, and group homes did not promote traditional aims of punishment, as factor disfavoring ordinance being a criminal law under Ex Post Facto Clause, even if restrictions had deterrent or retributive effect, to the extent that they were intended to protect the public rather than to reduce sex offenders' incentives to reoffend through imposition of negative consequences. U.S. Const. art. 1, § 10, cl. 1.
18 Constitutional Law Sex Offenders
Mental Health Sex offenders
City ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes lacked rational connection to nonpunitive purpose, as factor favoring ordinance being a criminal law under Ex Post Facto Clause, where ordinance's stated purpose was to serve city's "compelling" interest to promote, protect, and improve health, safety, and welfare of citizens, particularly children and vulnerable adults, and ordinance restricted sex offenders of all types, including sex offenders who victimized adults, without individualized case-by-case assessment. U.S. Const. art. 1, § 10, cl. 1.
19 Criminal Law Prevention and Investigation of Crime
States may make reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences, including registration and notification
20 Constitutional Law Sex Offenders
Mental Health Sex offenders
City ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes was excessive in relation to its stated purpose of promoting, protecting, and improving health, safety, and welfare of citizens, as factor favoring ordinance being a criminal law under Ex Post Facto Clause, where ordinance included sex offenders who victimized adults and applied to all sex offenders convicted of enumerated offenses without individualized assessment, and entire swaths of were restricted only due to group homes, not schools or day care facilities. U.S. Const. art. 1, § 10, cl. 1.
21 Constitutional Law Sex Offenders
Mental Health Sex offenders
City ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes imposed affirmative disability or restraint, as factor favoring ordinance being a criminal law under Ex Post Facto Clause, where entire swaths of city were restricted only due to group homes, not schools or day care facilities. U.S Const. art. 1, § 10, cl. 1.
22 Civil Rights Property and housing
Civil Rights Criminal law enforcement; prisons
Injunction Sexual predators and offenders
Sex offender could suffer irreparable harm absent preliminary injunction against city ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes, as factor favoring grant of such injunction in action alleging that ordinance violated Ex Post Facto Clause, where there were 69 unrestricted rental properties available, and 60 of them were in building that did not allow

convicted felons like sex offender to rent; sex offender could be forced into homelessness. U.S. Const. art. 1, § 10, cl. 1.
23 Civil Rights Property and housing
Civil Rights Criminal law enforcement; prisons
Balance of harms favored sex offender, as factor favoring grant of preliminary injunction against city ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes in action alleging that ordinance violated Ex Post Facto Clause, even if barring city from enforcing ordinance against sex offender would undermine its health and safety goals, where sex offender could be forced into homelessness and was likely to prevail on the merits. U.S. Const. art. 1, § 10, cl. 1.
24 Civil Rights Property and housing
Civil Rights Criminal law enforcement; prisons
Public interest was factor disfavoring grant of preliminary injunction against city ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes, in sex offender's action alleging that ordinance violated Ex Post Facto Clause; even if public had interest in overturning unconstitutional laws, public also had interests in enforcing constitutional laws and protecting children from predatory offenders. U.S. Const. art. 1, § 10, cl. 1.
25 Civil Rights Property and housing
Civil Rights Criminal law enforcement; prisons
District Court would waive bond required for preliminary injunction against city ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes in sex offender's action alleging that ordinance violated Ex Post Facto Clause; city had not objected to waiver of requirement nor demonstrated any costs or monetary damages that could result from injunction's issuance, and sex offender sought to vindicate important constitutional right. U.S. Const. art. 1, § 10, cl. 1; Fed. R. Civ. P. 65(c).
26 Injunction Amount
The amount of the bond required for a preliminary injunction rests within the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of that discretion. Fed. R. Civ. P. 65(c).

Attorneys and Law Firms

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MEMORANDUM OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

JOHN R. TUNHEIM, Chief Judge

Plaintiff Thomas Wayne Evenstad filed a motion for a preliminary injunction in this constitutional challenge against the City of West St. Paul, its mayor, and several Doe defendants (collectively, "the City"). Evenstad argues that a West St. Paul ordinance restricting sex offenders from residing within 1200 feet of schools, day care centers, and group homes (the "Ordinance") violates the Ex Post Facto Clause.[1] The City's response that Eighth Circuit precedent forecloses Evenstad's argument is unavailing, because the Ordinance is significantly more restrictive than those upheld by the Eighth Circuit. Because Evenstad shows that the equities are strongly in his favor and that he is likely to succeed on the merits, the Court will grant his Motion for a Preliminary Injunction.

BACKGROUND

The West St. Paul City Council passed the Ordinance in December 2016 by a unanimous vote (Decl of Peter J Nickitas ("Nickitas Decl ") ¶ 3, Ex 1, Sept 29, 2017, ***1091** Docket No 17) The findings and intent section of the Ordinance states

> Repeat predatory offenders, predatory offenders who use physical violence and predatory offenders who prey on children and vulnerable individuals are predators who present a threat to the public safety It is the intent of this chapter to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by creating areas around locations where children and vulnerable individuals regularly congregate wherein certain predatory offenders are prohibited from establishing a primary or secondary address

IX West St Paul City Code ("City Code")) § 97.01

The public record surrounding enactment of the Ordinance, as made available by the City, is largely consistent with its stated intent A memo prepared by the City's police chief in advance of the first reading of the Ordinance contrasted "the Council's desire to establish a business and residential growth direction" with forces that "tend to change neighborhood character overnight," including group residential housing and predatory offenders (Decl of Ben Boike ("Boike Decl.") ¶ 2, Ex. 2 at 22, Oct 27, 2017, Docket No 39.) The memo focused on the safety threat posed by "a rapid influx of predatory offenders," and noted the chief's concern "about what is on the horizon when the state begins to deinstitutionalize those offenders currently being held in [civil] confinement." (*Id.*) The chief proposed "a safe-zone around those institutions where potential victims are likely to congregate," and explained that he had "considered varying differences including 1,000, 1,500 and 2,000 feet and found 1,200 feet to be a good balance in protecting the public's interest while still allowing areas where predatory offenders may reside " (*Id.* at 23.)

At the first reading of the Ordinance, the police chief's presentation included a "detailed account of predatory offenders and the risks and danger to our community " (Boike Decl. ¶ 1, Ex 1 at 13.) Three council members spoke—one supporting of the Ordinance, and two wondering if it could be stricter—and a fourth voted to second the motion to approve the reading. (*Id*) There was an opportunity for public comment at the second reading, but no one spoke (Boike Decl ¶ 3, Ex 3 at 29) The Ordinance was approved without further deliberation (*Id*) Neither the memo nor the meeting minutes reflect the City's reasoning for including group homes in the Ordinance or discussion of including offenders who victimized adults without individualized risk assessment.

As enacted, the Ordinance prohibits any designated offender from living within 1200 feet of schools, licensed day care centers, and state licensed residential care or housing with services establishments (City Code § 97.03(A)) It also prohibits renting to such an offender (*Id* § 97.04.) Violations of the Ordinance may result in "a misdemeanor or administrative citation." (*Id* § 97.03(D).) It excepts certain offenders—minors, those who offended and were convicted as minors, those living with family, those domiciled in a restricted area prior to the Ordinance's enactment, and those domiciled in an area that becomes restricted due to a new facility (*Id* § 97 03(E)) Based on a map provided by the City, Evenstad estimates that the restrictions cover approximately 90% of the total area and as much as 95% of the residential area of the city (*See* Nickitas Decl., Ex 1 at 5) The City submits that there are 69 rental units in unrestricted areas (Second Decl of Ben Boike ("2d Boike Decl ") ¶ 5.) The City does not dispute ***1092** Evenstad's claim that 60 of those units are in a building that, as a matter of policy, does not rent to felons

The Ordinance does not define "designated offender," but it defines "predatory offender"[2] by reference to two other sources

> Any person who [1] is required to register as a predatory offender under [Minnesota Statute] § 243.166, or [2] has been convicted of a designated sexual offense, regardless of whether the adjudication has been withheld, in which the victim of the offense was less than 16 years of age.

(City Code § 97.02.) Thus, the first category includes anyone who is required by the state of Minnesota to register as a sex offender. Notably, the Minnesota registration requirement applies to offenders who victimized adults. *See* Minn. Stat. § 243.166, subd. 1b. The Minnesota registration requirement generally persists for ten years after an offender's release from confinement; as such, the Ordinance's residency restrictions apply to individuals in this category for ten years after their release. *See*Minn. Stat. § 243.166, subd. 6. The second category includes anyone convicted of a "designated sexual offense" against a victim less than 16 years of age. The Ordinance defines "designated sexual offense" to include several state crimes, including first through fourth degree criminal sexual conduct, solicitation of children, incest, indecent exposure, or any of three child pornography crimes. (City Code § 97.02.) There is no time limitation for individuals in this category; as such, the Ordinance's residency restrictions for offenders who victimize children under 16 apply for life. *See id.*

Evenstad, 52, falls into the first category: he was convicted in 1999 of First Degree Criminal Sexual Conduct using force or coercion and causing personal injury to an 18–year-old victim. (Nickitas Decl. ¶ 3, Ex. 2 (Decl. of Thomas Evenstad ("Evenstad Decl.")) ¶ 2, Sept. 29, 2017, Docket No. 17.) On August 21, Evenstad was released from jail and moved into an apartment in a West St. Paul residence. (*See id.* ¶ 3.) Three days later, City police informed Evenstad's landlord that Evenstad was prohibited from living there and warned both that they would be subject to criminal charges if Evenstad did not vacate by September 5. (*Id.* ¶¶ 5–6.) The building is within 1200 feet of at least one day care center and two group homes. (*See* Nickitas Decl. ¶ 3, Ex. 3 at 1.)

On August 31, Evenstad filed a pro se complaint and motion for preliminary injunction. (Compl., Aug. 31, 2017, Docket No. 1; Mot. for Prelim. Inj., Aug. 31, 2017, Docket No. 3.) The next day, police agreed to give Evenstad until September 30 to vacate the duplex. (Evenstad Decl. ¶ 11.) After obtaining counsel, Evenstad filed the Motion for a Temporary Restraining Order and Preliminary Injunction that is now before the Court. (Ex Parte Mot. for Prelim. Inj., Sept. 29, 2017, Docket No. 13.)

DISCUSSION

I. STANDARD OF REVIEW

1,2 The Court considers four factors in determining whether to issue a preliminary injunction: (1) the likelihood that the moving party will succeed on the merits, ***1093** (2) the threat of irreparable harm to the moving party, (3) the balance of harms as between the parties, and (4) the public interest. *See Grasso Enters., LLC v. Express Scripts, Inc.*, 809 F.3d 1033, 1036 n.2 (8th Cir. 2016) (citing *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc)). "At base, the question is whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined." *Dataphase*, 640 F.2d at 113.

II. LIKELIHOOD OF SUCCESS ON THE MERITS

3,4,5,6 "In balancing the equities no single factor is determinative." *Dataphase*, 640 F.2d at 113. As such, likelihood of success "must be examined in the context of the relative injuries to the parties and the public." *Id.* However, likelihood of success on the merits is the most significant factor in considering a preliminary injunction. *S.J.W. ex rel. Wilson v. Lee's Summit R–7 Sch. Dist.*, 696 F.3d 771, 776 (8th Cir. 2012).

A. Required Showing

7,8,9,10 The likelihood of success factor ordinarily requires the moving party to prove only a "fair chance of prevailing," which may mean "something less than fifty percent." *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 730 (8th Cir. 2008) (en banc). When the matter at issue is a law that was the product of "government action based on presumptively reasoned democratic processes," however, the moving party must show that they are "likely to prevail on the merits." *Id.* at 732–33. With a city ordinance, the question is "to what extent the challenged action represents 'the full play of the democratic process.' " *Id.* at 732 n.6 (quoting *Able v. United States*, 44 F.3d 128, 131–32 (2d Cir. 1995)); *see also Johnson v. Minneapolis Park & Rec. Bd.*, 729 F.3d 1094, 1098 (8th Cir. 2013) (applying the "likely to prevail" standard to a park board's speech restriction).

Evenstad alleges that the Ordinance was passed by a unanimous vote of the City Council, signed by the previous mayor, and enforced under the current mayor, and that others in the City's government assisted in developing it. (Compl. ¶¶ 12–14.) The City submits evidence of the first and second readings of the Ordinance at council meetings and documents circulated prior to the first reading. (Boike Decl. ¶¶ 1–3, Ex. 1–3.) The Court finds that the Ordinance was enacted pursuant to a "presumptively reasoned democratic processes," if not a terribly deliberative one. As such, Evenstad bears the burden of showing that he is "likely" to prevail on the merits.

B. The Ex Post Facto Clause

In support of his Motion for Preliminary Injunction, Evenstad argues that the Ordinance's restrictions on all "designated offenders," regardless of date of offense, are retroactive punishment prohibited by the Constitution's Ex Post Facto Clause.

11,12 Sex offender registration laws do not violate the Ex Post Facto Clause if they establish civil proceedings rather than criminal punishment. *Smith v. United States*, 538 U.S. 84, 92, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003). To determine whether a law is civil or criminal, the court must ask: (1) Did the City intend to impose punishment? (2) If not, is the law "so punitive either in purpose or effect" as to negate the City's intention that it be civil? *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 361, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997)) (internal quotation marks omitted). Five factors, though neither exhaustive nor dispositive, are relevant to analysis of ***1094**whether a law is punitive in effect. *Id.* at 97, 123 S.Ct. 1140 (citing *Kennedy v. Mendoza–Martinez*, 372 U.S. 144, 168–169, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963)). Courts must ask "whether, in its necessary operation, the regulatory scheme: has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose." *Id.*

1. The Eighth Circuit

The Eighth Circuit has twice applied *Smith* to resolve Ex Post Facto challenges to sex offender residency restrictions, in both instances upholding the challenged laws.

First, in *Doe v. Miller*, the Eighth Circuit upheld an Iowa statute prohibiting sex offenders who had victimized minors from residing within 2000 feet of a school or day care. 405 F.3d 700, 704 (8th Cir. 2005). It concluded that the statute was not punitive because the legislature's intent was to protect the health and safety of Iowa citizens. *Id.* at 718–19. It then applied the five *Smith* factors to conclude that the law was not so punitive in effect as to negate the legislature's intent. *Id.* at 719–23. First, it rejected the argument that the residency restrictions amounted to the historical punishment of "banishment" because they did not "expel" offenders from the restricted areas altogether. *Id.* at 719–20. It did so despite the fact that the record showed that "the restricted areas in many cities encompass the majority of the available housing," and in smaller towns even a single facility "can cause all of the incorporated areas of the town to be off limits" to offenders. *Id.* at 706 & n.2. Second, it found that the statute's goal of "protecting the health and safety of children" outweighed its deterrent or retributive effects. *Id.* at 720. Third, it noted that

the restrictions imposed less disability or restraint than a civil commitment scheme the Supreme Court had approved. *Id.* at 721 Fourth, it found that the restrictions had a rational connection to a nonpunitive purpose. *Id* Lastly, it found that the restrictions were not excessive Crediting trial testimony that "convicted sex offenders as a class were more likely to commit sex offenses against minors than the general population," the court stated that "[t]he absence of a particularized risk assessment [ ] does not necessarily convert a regulatory law into a punitive measure " *Id.* at 721

Second, in *Weems v Little Rock Police Department*, the Eighth Circuit upheld an Arkansas statute prohibiting certain sex offenders from residing within 2000 feet of a school or day care 453 F.3d 1010, 1012 (8th Cir. 2006). The court began by looking to *Miller*, finding that:

> The Iowa statute differed from the Arkansas law in two principal ways. The Iowa statute was narrower in that it applied only to offenders convicted of sex offenses against minors, while the Arkansas law applies to some sex offenses in which adults were victimized. The restrictions of the Iowa statute affected offenders more broadly, however, because they applied to every sex offender convicted of an enumerated offense, without any individualized assessment.

Id at 1015. Specifically, the Arkansas law applied to offenders who received an individually-assigned risk level of three ("high risk") or four ("sexually violent predators") *Id* at 1012–13. Risk levels are assigned by expert examiners, and, for level four offenders, by a sentencing court. *Id.* An offender has a right to request an administrative review and, if unsuccessful, to challenge an assigned risk level in court. *Id* at 1013. The Court concluded that the ***1095** legislature's intent was not punitive, in part because the restriction was passed as part of the state's overall registration scheme *Id* at 1017 And it concluded that the case-by-case risk assessment process put the Arkansas law "on even stronger constitutional footing than the Iowa statute." *Id* at 1017. The court specifically noted that this "fine-tuning of the restriction addresses the principle concern of the dissenting judges who believed the Iowa statute violated the Ex Post Facto Clause." *Id.*

2. Persuasive Authority

Lacking direct support in the Eighth Circuit, Evenstad turns to analogous cases decided elsewhere in the intervening decade since *Miller* and *Weems* to argue that he is likely to prevail here. While none of these cases are controlling, they offer persuasive authority in support of the proposition that courts are skeptical of schemes that are stricter than those upheld in *Miller* and *Weems*.

First, Evenstad cites a Sixth Circuit case holding that Michigan's sex offender statutory regime (which, as relevant here, prohibited registered sex offenders from living, working, or loitering within 1000 feet of a school) violated the Ex Post Facto Clause. *Does # 1–5 v Snyder*, 834 F.3d 696, 698, 706 (6th Cir. 2016), *reh'g denied*(Sept. 15, 2016), *cert. denied sub nom Snyder v John Does # 1–5*, —— U.S. ——, 138 S.Ct. 55, 199 L Ed.2d 18 (2017) Like the Arkansas statute in *Weems*, the Michigan law applied to offenders who victimized adults—but the court was concerned that the restrictions were based entirely on the crime of conviction rather than individualized assessment *Id* The court expressed particular concern that the classifications were not appealable. *Id.* at 702–03 It was also concerned about the restrictions on working and loitering, *id.* at 703, and the lack of evidence as to the efficacy of such restrictions, *id.* at 704–05.

Second, Evenstad discusses a Wisconsin district court case considering an ordinance that restricted offenders who had victimized children from living within 3000 feet of a prohibited location (including schools, day cares, parks, trails, playgrounds, places of worship, and athletic fields used by minors) and 500 feet of each other. *Hoffman v Vill of Pleasant Prairie*, 249 F.Supp 3d 951, 954 (E.D Wis. 2017) Those not already living in the Village were banned altogether *Id* The court called the ordinance "nigh unprecedented in its punitive effect," *id* at 958, comparing it unfavorably to the Iowa and Arkansas

statutes. *Id.* at 959–60 (noting in particular the lack of individualized assessment, lack of exemptions, and lifetime ban on residency).

Third, Evenstad turns to the Eleventh Circuit that considered a law prohibiting offenders who had victimized someone under sixteen from living within 2500 feet of a school. *Doe v. Miami–Dade Cty., Fla.*, 846 F.3d 1180, 1182–83 (11th Cir. 2017). The court affirmed denial of a motion to dismiss an Ex Post Facto challenge because the complaint sufficiently alleged that the county law created an affirmative disability (plaintiffs alleged that their homelessness resulted from the residency restriction) and because the law was excessive in relation to its stated purpose (it contained no individualized assessment and applied for life). *Id.* at 1185–86. The court distinguished the ordinance from a less-severe, time-limited state residency restriction. *Id.* at 1186.

Finally, Evenstad cites two state supreme court cases. In *Commonwealth v. Baker*, the Kentucky Supreme Court overturned a state law barring all registered offenders from residing within 1000 feet of a school, playground, or day care. ***1096** 295 S.W.3d 437, 439–441, 447 (Ky. 2009). The *Baker* court was similarly troubled that the statute covered all offenders, regardless of their victim's age, and that it did not contain any sort of individualized risk assessment. *Id.* at 444, 446. And in *Starkey v. Oklahoma Dep't of Corr.*, the Oklahoma Supreme Court held that retroactive application of a state-law restriction on residency within 2000 feet of locations including schools, playgrounds, parks, and day cares violated the state constitution's Ex Post Facto Clause, in part because the extension took place without any individualized risk assessments. 305 P.3d 1004, 1026, 1028–30 (Okla. 2013). That said, the Tenth Circuit reached the opposite conclusion based on the federal Constitution. *See Shaw v. Patton*, 823 F.3d 556, 576–77 (10th Cir. 2016). That court was not troubled by the lack of individualized assessment, in part because the plaintiff "has not shown that his own risk of recidivism is particularly low." *Id.*

C. Analysis

1. Intent

13,14,15 To discern intent, courts "consider the statute's text and its structure to determine the legislative objective." *Smith*, 538 U.S. at 92, 123 S.Ct. 1140. "[C]onsiderable deference must be accorded to the intent as the legislature has stated it." *Id.* at 93, 123 S.Ct. 1140. Here, the Ordinance states that its purpose is "to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city," with a particular focus on "children and vulnerable individuals." City Code § 97.01. Moreover, while the legislative record shows generalized discussion of the safety risks posed by offenders, it does not show consideration of the specific risks posed by offenders who victimized adults or specific dangers posed to vulnerable adults.[3] (Boike Decl. ¶¶ 1–2, Ex. 1 at 13, Ex. 2 at 22–23.) The Ordinance is triggered solely by underlying criminal offenses and may result in a criminal misdemeanor, but it is situated in the "General Regulations" title of the City Code. On the record before the Court, it appears that the intent of the City Council was to create a civil, nonpunitive regime.

2. Effects

The Court therefore turns to the Ordinance's effects to determine whether they are so punitive in nature as to negate the City's stated intent. Although the City argues that the 1200–foot restriction in the Ordinance makes it "less onerous" than the 2000–foot restrictions upheld in *Miller* and *Weems*, the Eighth Circuit's comparison of the Iowa and Arkansas statutes shows that the Court's analysis must go beyond the distance covered by the restriction. *See Weems*, 453 F.3d at 1015. The City's Ordinance is in actuality stricter than either of the two statutes the Eighth Circuit upheld because it consolidates multiple categories of offenders into one and applies an across-the-board restriction on residency near schools, day care centers, and group homes to each. As such, new analysis is required.

a. Historically Regarded as Punishment

16 Under *Smith*, the first factor is whether the nature of the Ordinance has been regarded in our history and traditions as punishment. *Miller* forecloses Evenstad's argument that the residency restriction **1097* is banishment. The Eighth Circuit focused on the fact that the residency restriction in *Miller* did not prohibit offenders from being present during the day to hold that it was unlike banishment. 405 F.3d at 719–20 Evenstad acknowledges that the Ordinance does not prohibit him from being present in the restricted areas, only from living in them.

b. Traditional Aims of Punishment

17 A related factor is whether the Ordinance promotes traditional aims of punishment. Evenstad says that it advances all three traditional aims of punishment: incapacitation (because it keeps offenders away from certain locations), retribution (because its application is based on prior acts, not current assessments of danger), and deterrence (because the goal is to avoid recidivism). His arguments as to deterrence and retribution are foreclosed by *Miller*, which acknowledged that residency restrictions could have a deterrent or retributive effect, but are nonpunitive to the extent that they are intended to protect the public rather than to reduce the offender's incentive to reoffend through imposition of negative consequences. *See* 405 F.3d at 720; *see also Smith*, 538 U.S. at 102, 123 S.Ct 1140. Evenstad's incapacitation argument is unique, but fails in part for the same reason and in part because offenders are not restricted from mere presence

c. Affirmative Disability or Restraint

The next factor is whether the Ordinance imposes an affirmative disability or restraint. The court in *Miller* explained that the degree of any disability or restraint must be considered in light of the law's "countervailing nonpunitive purpose"—the greater the legitimate objective, the more restraint is allowed 405 F.3d at 720–21. The court acknowledged that the Iowa statute "does impose an element of affirmative disability or restraint," but linked this factor together with the fourth and fifth factors to determine whether its degree was permissible. *Id.* Although the Ordinance includes group homes on the list of restricted facilities, its overall coverage (and therefore restraint) is not necessarily greater than what was at issue in at least some cities and towns in *Miller*. The Court will therefore consider this factor together with the next two factors.

d. Rational Connection to Nonpunitive Purpose

18 The final two factors, which are closely related, are whether the Ordinance has a rational connection to a nonpunitive purpose, and whether its restrictions are excessive with respect to this purpose. Evenstad argues that the Ordinance lacks a rational connection to its stated purpose (because it does not target offenders who victimized minors and is not supported by evidence) and is excessive with respect to the stated purpose (because the restrictions do not allow for individualized assessment) To the extent that the Ordinance is coextensive with those upheld by the Eighth Circuit in *Miller* and *Weems*, his argument must fail. But the Ordinance at issue here is broader in important ways it is intended to protect more than just minors, it restricts offenders who victimized adults without an individualized case-by-case assessment, and it restricts residency near group homes. As such, though *Miller*and *Weems* certainly guide the Court's analysis of these factors, they do not command an outcome.

The stated purpose of the Ordinance is "to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city," particularly "children and vulnerable **1098* individuals " City Code § 97.01. The record shows that the Ordinance was designed to address the City's concerns that predatory offenders "tend to change neighborhood character overnight," and that a "rapid influx" of such offenders "can quickly degrade a community's sense of safety." (Boike Decl. ¶ 2, Ex. 2 at 22.) This focus on "character" and "sense of safety" rather than actual safety is questionable, and even the reasonable goal of protecting vulnerable adults and the community writ large is significantly broader than the nonpunitive purpose of the statutes affirmed by the Eighth Circuit

in *Miller* and *Weems*. *See Miller*, 405 F.3d at 721 ("minimizing the risk of repeated sex offenses against minors"); *Weems*, 453 F.3d at 1017 ("minimizing the risk of sex crimes against minors").[4]

19 Admittedly, however, it is similar to a purpose affirmed as legitimate in *Smith*: "public safety, which is advanced by alerting the public to the risk of sex offenders in their communit[y]." 538 U.S. at 103, 123 S.Ct. 1140. And states may make "reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences," including registration and notification. *Id.* But the City has pointed to no case—in the Eighth Circuit or anywhere else—where a court held that residency restrictions were rationally connected to so broad a purpose as "promot[ing], protect[ing] and improv[ing] the health, safety and welfare of the citizens of the city."

Perhaps it is possible to read a more limited purpose to the Ordinance: protecting the safety of "children and vulnerable individuals."[5] But even this more limited purpose is broader than that of the statutes in *Miller* and *Weems*—and the City has not cited any cases where a court upheld a law restricting offenders from residing near group homes. Nor did the City consider any evidence that the same sort of "temptation and opportunity" posed by contact between children and sex offenders who victimized children, *See Miller*, 405 F.3d at 720, is posed by contact between vulnerable adults and sex offenders of all types.

But with all that said, the Supreme Court has noted that a law "is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance." *Id.* (distinguishing cases where the nonpunitive purpose is a "sham or mere pretext"). Evenstad does make a colorable argument that there is no rational connection between the stated nonpunitive purpose of protecting children and vulnerable individuals and the Ordinance's across-the-board residency restrictions, ***1099** particularly in light of the City's consideration of "neighborhood character." But he has not demonstrated that he is likely to prevail in making the case that the City's stated purpose is a sham or pretext.

e. Excessive in Relation to a Nonpunitive Purpose

20 Evenstad's case that the Ordinance is excessive in relation to its stated purpose, however, is strong. First, like the Arkansas statute in *Weems*, the City's Ordinance is harsher than the Iowa law because it includes offenders who victimized adults. Second, like the Iowa statute in *Miller*, the City's Ordinance is broader than the Arkansas law because it applies to every sex offender convicted of an enumerated offense without any individualized assessment. Third, unique among the laws considered in the cases cited by the parties, the Ordinance includes group homes among the restricted facilities.

With regard to the first two points, it is true that *Weems* forecloses Evenstad's suggestion that the Ordinance is excessive merely because it restricts offenders who victimized adults. *See* 453 F.3d at 1015. But it is also true that a crucial aspect of holding such a restriction constitutional is that an individualized assessment is required. *Id.* This is particularly relevant in an Ex Post Facto challenge, because an across-the-board restriction is directly tied to an offender's prior conviction, not to any present threat to community safety. That is why the Arkansas law's appealable individualized assessment, and the resulting application of restrictions to only the most dangerous offenders, put it "on even stronger constitutional footing" than the Iowa statute. *Id.* at 1017. Like the Eighth Circuit, other circuit courts have stressed the importance of individualized assessment, treating laws containing across-the-board restrictions with skepticism. *See Miami-Dade Cty.*, 846 F.3d at 1185; *Snyder*, 834 F.3d at 702, 705. Indeed, of the four persuasive cases the City cites for support, only two (both from New York) discuss laws restricting offenders who victimized adults—and those laws included individualized assessments. *Wallace v. New York*, 40 F.Supp.3d 278, 325 (E.D.N.Y. 2014);[6] *Matter of Devine v. Annucci*, 150 A.D. 3d 1104, 56 N.Y.S.3d 149 (2017).[7]

The Minnesota sex offender regime already requires an end-of-confinement risk assessment to determine whether an offender has a low, moderate, or high risk of reoffense. Minn. Stat. § 244.052, subd. 3. Offenders have a limited right to request review of the assessment, though not to appeal it to a court. *See id.* at § 244.052, subd.3(1). It is undisputed that the Ordinance does not take that assessment into account. The City argued at the hearing on this motion that even offenders assigned the lowest risk level pose at least some safety risk, but under Minnesota law all released offenders must be assigned to one of these three risk levels. *See id.* As such, the fact that an offender is not adjudicated zero-risk is a direct result of the crime of ***1100*** conviction. Even though the Ordinance does except certain offenders from its restrictions, neither the Ordinance nor the record of its enactment reflect any consideration of whether or how the City should take into account the state's risk assessment. The fact that the Ordinance does not do so—let alone the fact that the City did not even consider whether it should—cuts strongly in Evenstad's favor.

21 With regard to the third point, including group homes among the restricted facilities significantly increases the degree of restraint. The City's map of restricted areas reveals that there are 36 such facilities in the City and six more within 1200 feet of its boundaries. Entire swaths of the City are restricted only due to group homes, not schools or day care facilities. As such, this factor expands the restraint on offenders in a manner, if not a degree, that has not been considered by the Eighth Circuit. Although the *Miller* court acknowledged that the Iowa statute severely restricted living options for offenders, it did so as a side effect of its necessary operation. Here, by contrast, the Ordinance's restrictions on residency near group homes are outside the traditional operation of these sorts of statutes—and the resulting expansion in coverage is more reminiscent of the complete ban in *Pleasant Prairie* than the incidental effect in *Miller* or *Weems*. Again, neither the Ordinance nor the record of its enactment reflect any consideration of whether or how the City should take into account the unique nature of group homes. This fact, too, cuts in Evenstad's favor.

Relatedly, the fact that *Smith*, *Miller*, and *Weems* all deal with state statutes and not city ordinances is worthy of mention. Again, in each instance the restrictions were part and parcel of the state's broader regularly regime—not a piecemeal addition layered on top. The *Weems* court specifically cited the fact that the residency restriction was enacted as part of a bill relating to registration as evidence of its nonpunitive nature. 453 F.3d at 1017. And the persuasive authority reviewed above reveals that courts are generally more skeptical of local restrictions than statewide restrictions. *See, e.g., Miami–Dade Cty.*, 846 F.3d at 1185–86 (distinguishing a more-restrictive county ordinance from the state regime and overturning it); *cf. Wallace*, 40 F.Supp.3d at 324–25 (distinguishing more-restrictive county and town restrictions from the state regime and upholding them). This fact also cuts narrowly in Evenstad's favor.

Finally, the Court notes that Evenstad has submitted some recent evidence that sex offender residency restrictions are ineffective at preventing recidivism. The City is of course correct that such research is insufficient to justify a holding that Evenstad is likely to prevail in an effort to overturn the state regimes upheld by the Eighth Circuit. But the evidence does lend support to Evenstad's case that the City's more restrictive Ordinance is excessive in relation to its stated purpose.

* * *

In sum, although the two factors related to whether the Ordinance takes the form of traditional punishment cut in favor of the City, the three factors related to whether the Ordinance's restrictiveness is rationally related to its purpose cut in favor of Evenstad. Although it is a close call], the Court finds that Evenstad is likely to prevail on the merits.

III. OTHER FACTORS

The other three factors the Court considers in determining whether to grant a preliminary injunction are: (2) the threat of irreparable harm to the moving party, ***1101*** (3) the balance of harms, and (4) the public interest. *Dataphase*, 640 F.2d at 114.

22 Evenstad argues that he will suffer irreparable harm absent an injunction because he will likely be forced into homelessness, may lose his job, and could even go back to prison for a probation violation. The City concedes that eviction can be an irreparable injury when a party faces "the real threat of homelessness," *Greer v. Mehiel*, No. 15-CV-6119, 2016 WL 828128, at *9 (S.D.N.Y. Feb. 24, 2016), but disputes that such a threat exists here. In support, it submits evidence that there are 69 rental properties in the City available to designated offenders. (2d Boike Decl. at ¶ 5.) That fact nicely makes Evenstad's case that there are few places for him to live. Evenstad takes it further by noting that he contacted the 60–unit building the City lists as available and found that, in addition to being cost-prohibitive, it does not allow convicted felons to rent. The Court finds that Evenstad has shown he would suffer irreparable harm absent an injunction.

23 Next, Evenstad argues that the balance of harms is in his favor because the City would not suffer any harm from an injunction because his homelessness would be worse for the City than his residency there. The City responds that barring it from enforcing the Ordinance against Evenstad would undermine not only its health and safety goals, but its very authority to govern.[8] Because the Court believes Evenstad has shown that he is likely to prevail on the merits, it finds that the balance of harms cuts narrowly in Evenstad's favor.

24 Similarly, the public interest factor turns almost entirely on resolution of the merits—Evenstad says that all citizens have an interest in overturning unconstitutional laws, while the City says that the public has an interest in enforcing those that are constitutional. The City additionally quotes *Weems* for the straightforward proposition that the public has an interest in protecting children from predatory offenders. Even though that case says nothing about vulnerable adults, this point is sufficient for the Court to find that the public interest factor cuts narrowly in favor of the City.

Due to the risk of irreparable harm absent an injunction, however, the Court finds that these equities are strongly in Evenstad's favor. Because Evenstad is likely to succeed on the merits and the equities are strongly in his favor, the Court will grant his Motion for a Preliminary Injunction.

IV. SECURITY

25,26 Federal Rule of Civil Procedure 65(c) states that the Court "may issue a preliminary injunction ... only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The "amount of the bond rests within the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of that discretion." *Stockslager v. Carroll Elec. Coop. Corp.*, 528 F.2d 949, 951 (8th Cir. 1976). "Courts in this circuit have almost always required a bond before issuing a preliminary injunction, but exceptions have been made where the defendant has not objected ***1102*** to the failure to require a bond or where the damages resulting from a wrongful issuance of an injunction have not been shown." *Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Engr's*, 826 F.3d 1030, 1043 (8th Cir. 2016) (citations omitted). The City has not objected to waiver of the bond requirement nor demonstrated any costs or monetary damages that may result from issuance of the injunction. Moreover, Evenstad seeks to vindicate an important constitutional right. Under the circumstances, the Court will exercise its discretion to waive Rule 65(c)'s bond requirement. If the City wishes to object, the Court will consider its motion and argument.

V. CONCLUSION

This case presents a close call, primarily because of the Eighth Circuit precedents that guide the Court in this case. But the Court finds simply that West St. Paul has gone too far in the sweep of its Ordinance. No one disputes that a city has a strong interest in protecting its citizens. Indeed, a more narrowly drawn ordinance would likely pass constitutional muster. The addition of group homes to the restricted areas and the lack of individualized assessments as to risk, in the Court's view, severely impact the rights of Evenstad and others affected by the Ordinance and doom this set of restrictions.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Motion for Preliminary Injunction [Docket No. 13] is **GRANTED**.

2. The security requirement of Federal Rule of Civil Procedure 65(c) is waived.

Footnotes

1 Evenstad's initial pro se Complaint also alleged that the Ordinance violates the Equal Protection Clause and his procedural and substantive due process rights. Because Evenstad did not advance these arguments in support of this motion, the Court declines to consider them at this time, but does not consider them waived.

2 The prohibition on residency applies to "any designated offender." (City Code § 97.03(A).) So does the provision that applies to landlords. (*Id.* § 97.04(C).) But the exceptions section exempts certain "predatory offender[s]." (*Id.* § 97.03(E).) And the City Council's summary of the Ordinance says it applies to "new predatory offenders." (Nickitas Decl., Ex. 1 at 4.) The City stated at the hearing on this motion that the difference is of no legal significance.

3 Curiously, before turning to public safety, the police chief described predatory offenders and Group Residential Housing facilities together as "forces which ... tend to change neighborhood character overnight," and noted the "adverse impact" of the "growing number" of such facilities. (Boike Decl. ¶¶ 1–2, Ex. 1 at 13, Ex. 2 at 22–23.)

4 *Cf. Vasquez v. Foxx*, No. 16-CV-8854, 2016 WL 7178465, at *5 (N.D. Ill. Dec. 9, 2016) ("protecting children from convicted sex offenders"); *Duarte v. City of Lewisville*, 136 F.Supp.3d 752, 775 (E.D. Tex. 2015), *aff'd sub nom. Duarte v. City of Lewisville, Texas*, 858 F.3d 348 (5th Cir. 2017), *cert. denied sub nom. Duarte v. City of Lewisville, Tex.*, —— U.S. ——, 138 S.Ct. 391, 199 L.Ed.2d 281 (2017) (advancing "public safety and protection of the City's most vulnerable citizens, its children").

5 The City advanced this more limited purpose at the hearing on this motion, noting that an individual may be convicted of first degree criminal sexual assault under one of twelve subcomponents if he or she causes personal injury to a victim and knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless. *See* Minn. Stat. § 609.342(e)(ii). But the Ordinance does not distinguish the subcomponents of Section 609.342, or of any other predicate crime. As such, it is hard to see how the subcomponents of any particular crime of conviction play any role in determining whether the Ordinance's across-the-board restrictions on all offenders are rationally connected to the purpose of protecting vulnerable adults.

6 "Because the State registration requirements, and, by extension, the County and Town residency restrictions, rely on a 'particularized risk assessment' to ensure that the 'length and extent of' such regulations are tailored to this end, they are 'not excessive.' " *Id.* (quoting *Weems*, 453 F.3d at 1017).

7 At the hearing on this motion, the City cited *Devine* as an example of a court upholding the application of a residency restriction to a level-one offender against an Ex Post Facto challenge, but the offender at issue there victimized a minor and the state law that applied to him restricted only offenders who victimized minors and level-three offenders who victimized adults. 150 A.D. 3d at 1105; N.Y. Exec. Law § 259–c(14).

8 The City also argued that Evenstad would not suffer harm absent an injunction because the unit he was living in was an illegal rental unit. Evenstad does not dispute that this was the case at the time of the City's filing, and the City does not dispute that it is no longer true. Because Evenstad is legally in the unit now, the Court considers this fact of no moment.

743 Fed.Appx. 10
This case was not selected for publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007.
See also U.S.Ct. of App. 7th Cir. Rule 32.1.
United States Court of Appeals, Seventh Circuit.

Patrick James WERNER,
Plaintiff-Appellant,
v.
CITY OF GREEN BAY,
Defendant-Appellee.

No. 17-2426
|
Submitted July 30, 2018*
|
Decided July 30, 2018

Municipal ordinances that restricted where sex offender could reside while he was on parole did not violate Ex Post Facto Clause, even though ordinances were enacted after he was convicted, where ordinances had no retroactive effect, and $500 penalty for violating ordinance was minor. U.S. Const. art. 1, § 9, cl. 3.

[2] **Constitutional Law** Classification and registration; restrictions and obligations

Mental Health Effect of assessment or determination; notice and registration

City sex offender residence board's denial of sex offender's requests to reside at one specific residence while on parole did not violate his procedural due process rights, where board gave offender several hearings for individualized risk assessments, and eventually city changed its residency restrictions to categorically exempt halfway house where he wanted to live. U.S. Const. Amend. 14.

Appeal from the United States District Court for the Eastern District of Wisconsin. No. 15-CV-216, Nancy Joseph, *Magistrate Judge*.

Attorneys and Law Firms

Patrick J. Werner, Pro Se

Ann C. Wirth, Attorney, Gunta & Reak, S.C., Wauwatosa, WI, for Defendant-Appellee

Before DIANE P. WOOD, Chief Judge, ILANA DIAMOND ROVNER, Circuit Judge, DIANE S. SYKES, Circuit Judge

***11 ORDER**

Patrick Werner, a sex offender who is now incarcerated, challenges municipal ordinances that restricted where he could reside while he was on parole. The district court entered summary judgment for the City. Because the ordinances do not impose retroactive punishment and Werner was not deprived of due process, we affirm the judgment.

Our decision in Werner's prior appeal recounts his struggle to secure housing as a sex offender. *See Werner v. Wall*, 836 F.3d 751 (7th Cir. 2016). As relevant here, Werner was convicted in 1999 of second-degree sexual assault of a child and attempted child enticement. Since being paroled initially in 2004, he has been reincarcerated at least four times for violating conditions of supervision. When Warner has not been incarcerated, his probation officers have required him to live in Brown County (Wisconsin), the county where he was convicted. *See id.* at 754; Wis. Stat. § 301.03(20)(a)(1). But Werner's housing options there have been limited since 2007, when the City of Green Bay enacted residency restrictions for sex offenders. *See* Green Bay Mun. Code § 27.620 (repealed). The relevant ordinance prohibited sex offenders from residing within 2,000 feet of certain designated places where "children are known to congregate." It exempted residences that offenders share with relatives, and it contained procedures for seeking additional exemptions from the City's Sex Offender Residence Board.

On several occasions from 2009 to 2012, Werner sought permission to live at a particular halfway house within the restricted area. Each time the Sex Offender Residence Board, after a hearing, denied Werner's request. These denials affected Werner most significantly beginning in March 2010, when his inability to find appropriate housing resulted in his being detained in the Brown County Jail for more than a year

beyond his scheduled release date. During that period, Werner was let out of jail for four hours each weekday to look for housing and employment, yet not until July 2011 did Werner finally secure housing in Bellevue, a village just outside of Green Bay. In 2012 Green Bay replaced its ordinance with a similar one that categorically exempts halfway houses from the residency restrictions. Green Bay Mun. Code § 27.622. Werner later moved to the halfway house in Green Bay, where he lived until his most recent parole revocation in January 2013.

Werner alleges in this suit under 42 U.S.C. § 1983 that the application of these ordinances to him violates both the ex post facto clause of the Constitution and his right to procedural due process. A magistrate judge, presiding by consent, entered summary judgment for the City. The judge ruled that although the ordinances applied "retroactively to his convictions," that did not pose an ex post facto problem because the effects of the ordinance were not punitive. *See Smith v. Doe*, 538 U.S. 84, 92-106, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003). The judge also rejected Werner's due-process claim, reasoning that he was not entitled to due process regarding the enactment of the ordinances, *see Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 7-8, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003), and Werner's hearings before the Sex Offender Residence Board comported with the basic requirements of due process, i.e., notice and an opportunity to be heard, *see Goss v. Lopez*, 419 U.S. 565, 579, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975).

On appeal Werner maintains that the ordinances are impermissible ex post facto ***12** laws and violate his right to procedural due process. But we recently rejected nearly identical arguments in *Vasquez v. Foxx*, No. 17-1061, 895 F.3d 515, 2018 WL 3372403 (7th Cir. July 11, 2018). In *Vasquez* we considered a challenge to an Illinois statute that made it a felony for a sex offender to live within 500 feet of a day-care home. *Id.* at 517–18, at *1. After noting that "a statute is not an impermissible ex post facto law unless it is *both* retroactive *and* penal," *id.* at 520–21, at *3 (citing *United States v. Leach*, 639 F.3d 769, 773 (7th Cir. 2011)), we explained that the Illinois statute raised no ex post facto concerns because it had no retroactive effect at all; it applied "only to conduct occurring *after* its enactment—i.e., knowingly maintaining a residence within 500 feet of a child day-care home or group day-care home," *id.* After considering the factors in *Smith*, we added that the statute was not punitive. *Id.* at 520–23, at *3-5. And responding to the plaintiffs' procedural due-process argument that the statute was enforced against them without a hearing to assess whether they actually posed a threat to children, we concluded that no hearing was required because the statute applied to "*all* child sex offenders regardless of their individual risk of recidivism." *Id.* at 524, at *6.

[1] Werner's challenges to the Green Bay ordinances fail for the same reasons. That the City of Green Bay enacted the ordinances after Werner's convictions does not pose an ex post facto problem because the ordinances have no retroactive effect. *See id.* at 520–51, at *3. Moreover, the penalty for violating the ordinance—a $500 fine—is minor compared to the possible three-year prison sentence faced by the plaintiffs in *Vasquez*, underscoring that the Green Bay ordinances were not punitive. *Id.* at 520–23, at *3-5.

[2] Likewise, Werner is wrong when he asserts that the Board's denial of his requests "to reside at one specific residence ... requires a finding of [the] denial of due process." Werner is not entitled to any "hearing for an individualized risk assessment." *See id.* at 524, at *6; *see also Conn. Dep't of Pub. Safety*, 538 U.S. at 4, 123 S.Ct. 1160. Yet here the Sex Offender Residence Board gave Werner several such hearings, and eventually the City changed its residency restrictions to categorically exempt the halfway house where Werner wanted to live. Moreover, Werner does not articulate any coherent argument for why he thinks the Board's procedures were inadequate.

AFFIRMED

All Citations

743 Fed.Appx. 10

Footnotes

* We agreed to decide this case without oral argument because the briefs and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. *See* Fed. R. App. P. 34(a)(2)(C).

895 F.3d 515
United States Court of Appeals, Seventh Circuit.

Joshua VASQUEZ and Miguel Cardona, Plaintiffs-Appellants,

v.

Kimberly M. FOXX, in her official capacity as the State's Attorney of Cook County, and City of Chicago, Defendants-Appellees.

No. 17-1061
Argued November 28, 2017Decided July 11, 2018Rehearing and Rehearing En Banc* Denied August 14, 2018

Synopsis

Background: Convicted child sex offenders required to register as sex offenders and comply with state residential restrictions brought § 1983 action against city and state's attorney alleging that amendment to state residency statute violated the Ex Post Facto Clause, the Fifth Amendment's Takings Cause, and the Fourteenth Amendment's Due Process Clause. The United States District Court for the Northern District of Illinois, Amy J. St. Eve, J., 2016 WL 7178465, granted defendants' motion to dismiss. Plaintiffs appealed.

Holdings: The Court of Appeals, Sykes, Circuit Judge, held that:
1 city was not proper defendant;
2 residency restrictions did not implicate Ex Post Facto Clause;
3 offenders failed to exhaust administrative remedies with respect to takings claim;
4 residency restrictions did not constitute a taking;
5 residency restrictions did not violate procedural due process, and
6 residency restrictions did not violate substantive due process.

Affirmed.

West Headnotes (15)

1 **Civil Rights** Criminal law enforcement; prisons
City could not be held liable on convicted child sex offenders' § 1983 claims for violations of due process, the Takings Clause, and the Ex Post Facto Clause based on city police officers' enforcement of state law prohibiting offenders from residing within 500 feet of day-care home, where police department did not enforce a city ordinance or other municipal policy, and offenders failed to establish causal connection between city's monitoring of sex offenders' compliance with state law and offenders' alleged constitutional injury U.S. Const. art. 1, § 9, cl. 3; 42 U.S.C.A § 1983, 720 Ill. Comp. Stat. Ann 5/11-9.3(b-10).

2 **Civil Rights** Governmental Ordinance, Policy, Practice, or Custom
A municipality is subject to § 1983 liability only if one of its policies caused a constitutional injury. 42 U.S.C.A. § 1983

3 **Civil Rights** Governmental Ordinance, Policy, Practice, or Custom
The official policy analysis required for determining municipal liability under § 1983 isolates ultimate responsibility for a claimed constitutional violation, distinguishing the acts of a municipality from the acts of its employees. 42 U.S.C A. § 1983.

4 **Civil Rights** Governmental Ordinance, Policy, Practice, or Custom
A municipality's enforcement of a state law does not constitute an actionable official policy, for purposes of municipal liability under § 1983. 42 U.S.C.A. § 1983.

5 **Constitutional Law** Punishment in general

Ex Post Facto Clause forbids retroactive punishment, that is, the imposition of punishment more severe than the punishment assigned by law when the act to be punished occurred. U S. Const art 1, § 9, cl 3

6 Constitutional Law Penal laws in general

A statute is not an impermissible ex post facto law unless it is both retroactive and penal. U.S. Const art 1, § 9, cl. 3

1 Case that cites this headnote

7 Constitutional Law Sex Offenders

Mental Health Sex offenders

Amendment to Illinois statute imposing residency restrictions on convicted child sex offenders was not retroactive, and thus did not implicate the Ex Post Facto Clause, even though amendment applied to offenders who were convicted of child sex offenses before amendment was adopted, its requirements and any criminal penalty applied only to conduct occurring after its enactment, i.e , knowingly maintaining a residence within 500 feet of a child day-care home or group day-care home. U.S. Const. art. 1, § 9, cl 3; 720 Ill. Comp. Stat. Ann. 5/11-9 3(b-10).

2 Cases that cite this headnote

8 Constitutional Law Sex Offenders

Mental Health Sex offenders

Amendment to Illinois statute prohibiting convicted child sex offenders from residing within 500 feet of day-care homes was nonpunitive civil regulatory scheme, and thus did not implicate the Ex Post Facto Clause, where statute merely kept child sex offenders from living in very close proximity to places where children were likely to congregate, but did not force them to leave their communities, statute did not control any other aspect of offenders' lives and thus did not resemble the comprehensive control of probation and supervised release, and statute imposed no physical restraint and so did not resemble the punishment of imprisonment. U.S. Const. art. 1, § 9, cl. 3; 720 Ill. Comp. Stat. Ann. 5/11-9.3(b-10).

1 Case that cites this headnote

9 Eminent Domain Conditions precedent to action; ripeness

Convicted child sex offenders failed to exhaust administrative remedies with respect to claim against state's attorney challenging statute imposing residency restrictions on offenders prohibiting them from residing within 500 feet of child day-care home as violating the Fifth Amendment's Takings Clause, where offenders failed to seek damages in state court. U S. Const. Amend. 5; 720 Ill. Comp. Stat. Ann. 5/11-9.3(b-10).

10 Eminent Domain Conditions precedent to action, ripeness

To exhaust a takings claim, the plaintiff must seek relief in state court unless doing so would be futile. U.S. Const. Amend 5.

11 Eminent Domain Criminal justice in general

Amendment to Illinois statute imposing residency restrictions on convicted child sex offenders was not a taking for which offenders were entitled to compensation under the Fifth Amendment; although offenders could not reside within the 500–feet of child day-care homes, offenders were left with broad market to sell or sublease their residences at full market value, and because amendment was effective when offenders purchased home and leased apartment, its terms were necessarily part of any property-rights expectations they could have held. U.S Const. Amend. 5, 720 Ill Comp. Stat. Ann. 5/11-9.3(b-10).

12 Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

Factors to be considered in determining whether a regulatory taking has occurred include (1) the nature of the government action, (2) the severity of its economic impact on the property owner, and (3) the degree of interference with the owner's reasonable investment-backed expectations. U.S Const. Amend. 5.

13 Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

A taking may more readily be found when interference with property can be characterized as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good U.S. Const. Amend 5

14 Constitutional Law Classification and registration, restrictions and obligations

Mental Health Sex offenders

Amendment to Illinois statute prohibiting convicted child sex offenders from residing within 500 feet of day-care homes was not unconstitutionally enforced in violation of procedural due process, where statute placed restrictions on all child offenders regardless of individual risk of recidivism, and thus offenders were not entitled to a hearing for an individualized risk assessment to determine whether they actually posed a continued threat to children. U S. Const. Amend. 14, 720 Ill. Comp. Stat. Ann. 5/11-9.3(b-10)
15 Constitutional Law Classification and registration, restrictions and obligations
Mental Health Sex offenders
Amendment to Illinois statute prohibiting convicted child sex offenders from residing within 500 feet of day-care home did not violate substantive due process, where protecting children from child sex offenders was legitimate and compelling governmental interest, and creating a buffer between a child day-care home and the home of a child sex offender could have protected at least some children from harm. U S Const. Amend. 14, 720 Ill. Comp. Stat. Ann. 5/11-9.3(b-10).
1 Case that cites this headnote

517* Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 16–cv–8854—Amy J. St. Eve**, *Judge*.

Attorneys and Law Firms

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Kerrie Maloney Laytin, Attorney, Office of the Corporation Counsel, Appeals Division, Chicago, IL, for City of Chicago.
Before Bauer, Rovner, and Sykes, Circuit Judges.

Opinion

Sykes, Circuit Judge.

Joshua Vasquez and Miguel Cardona are convicted child sex offenders who live in Chicago and are required to register as sex offenders and comply with state restrictions on where they may live. For example, a child sex offender may not knowingly live within 500 feet of a school, playground, or child-care center. 720 ILL. COMP. STAT. 5/11–9.3(b–5), (b–10). A few years after Vasquez and Cardona were convicted, Illinois added child day-care homes and group day-care homes to the list of places included in the 500–foot residential buffer zone. § 5/11–9.3(b–10) When Vasquez and Cardona updated their sex-offender registrations in August 2016, the Chicago Police Department told them they had to move because child day-care homes had opened up within 500 feet of their residences. The Department gave them 30 days to come into compliance with the statute.

Vasquez and Cardona sued the City of Chicago and Kimberly M Foxx, the Cook **518*County State's Attorney,[1] seeking relief under 42 U.S.C. § 1983 based on four alleged constitutional violations. First, they claimed that the amendment to the residency statute imposes retroactive punishment in violation of the Ex Post Facto Clause. Next, they alleged that applying the amended statute to them amounted to an unconstitutional taking of their property in violation of the Fifth Amendment's Takings Clause Finally, they asserted two due-process claims, one procedural and one substantive· they complained that the

statute is enforced without a hearing for an individualized risk assessment and is not rationally related to a legitimate state interest

The district judge rejected each claim at the pleadings stage and we affirm Under Supreme Court and circuit precedent, the amended statute is neither impermissibly retroactive nor punitive, so it raises no ex post facto concerns. The plaintiffs' claim under the Takings Clause fails for two independent reasons: it is unexhausted and the amendment was adopted before they acquired their homes, so it did not alter their property-rights expectations. The procedural due-process claim is a nonstarter for the straightforward reason that there is no right to a hearing to establish a fact not material to the statute. And the law is not unconstitutional in substance it easily satisfies rational-basis review.

I. Background

Illinois first adopted residency restrictions for child sex offenders in 2000. Act of July 7, 2000, Pub Act No. 91–911, 2000 Ill Laws 2051. As originally enacted the law prohibited child sex offenders from knowingly residing within 500 feet of a "playground or a facility providing programs or services exclusively directed toward persons under 18 years of age." *Id.* In subsequent years the Illinois legislature amended the statute to add other places to the list. At issue here is a 2008 amendment prohibiting child sex offenders from knowingly residing within 500 feet of a "day care home" or "group day care home." Act of Aug. 14, 2008, Pub. Act No. 95–821, 2008 Ill. Laws 1383. Noncompliance is a Class 4 felony punishable by up to three years in prison. 720 ILL COMP. STAT. 5/11–9.3(f); 730 ILL. COMP. STAT. 5/5–4.5–45(a).

Plaintiff Joshua Vasquez was convicted of child-pornography possession in 2001 and must register as a sex offender for the rest of his life. His conviction also makes him a child sex offender within the meaning of the residency statute. 720 ILL. COMP. STAT. § 5/11–9.3(d)(1). On August 25, 2016, Vasquez visited the Chicago Police Department headquarters to complete his annual sex-offender registration. As of that date, he had lived in his Chicago apartment for three years with his wife and daughter, and his lease continued through August 19, 2017. The Department notified him that a child day-care home had opened 480 feet from his apartment and told him he had to move within 30 days. Vasquez alleges that he has been unable to find suitable and affordable housing that complies with the residency requirements. He also alleges that his daughter's schooling will be disrupted if the family has to move outside the school district.

Plaintiff Miguel Cardona was convicted of indecent solicitation of a child in 2004.[2] ***519** Like Vasquez, Cardona's conviction makes him a child sex offender subject to the requirements of the residency statute. *Id.* Cardona has lived in his Chicago home for roughly 25 years, but he did not purchase it until 2010 so he cannot claim an exemption for offenders who owned their homes prior to the enactment of the 2008 amendment. § 5/11–9.3(b–10). When Cardona completed his annual sex-offender registration on August 17, 2016, the Chicago Police Department notified him that a child day-care home had opened 475 feet from his residence. Like Vasquez, he was given 30 days to move. Cardona alleges that he cannot afford to move into compliant housing. He also alleges that the day-care home in question has been open since 2014 and his proximity to it has caused no problems

Vasquez and Cardona challenge the 2008 amendment facially and as applied to them. They sued the City of Chicago and State's Attorney Foxx seeking declaratory and injunctive relief under § 1983 for violation of the Ex Post Facto Clause, the Fifth Amendment's Takings Cause, and the Fourteenth Amendment's Due Process Clause. The judge entered an order enjoining the defendants from forcing the plaintiffs to vacate their homes or otherwise enforcing the amended statute against them while the case was pending

The defendants moved to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and the judge granted the motion She held that the 2008 amendment created only prospective legal obligations

and thus raised no concerns under the Ex Post Facto Clause. On the takings claim she concluded that the plaintiffs had not suffered an unconstitutional taking of their property under the test announced in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). Finally, the judge ruled that the complaint failed to state a procedural or substantive due-process claim because there is no right to a hearing to establish a fact not material under the statute and the challenged residency restriction is a rational means of protecting children from convicted child sex offenders.

Vasquez and Cardona appealed, and the judge granted their motion to extend her order maintaining the status quo through the pendency of the appeal. In the meantime Vasquez renewed his lease, and Cardona lives in the same home.

II. Discussion

1,2,3,4 We review the judge's dismissal order de novo. *Roberts v. City of Chicago*, 817 F.3d 561, 564 (7th Cir. 2016). Before taking up the merits of the plaintiffs' constitutional claims, we note that the City is not a proper defendant on any of them, at least not as the claims were pleaded. A municipality is subject to § 1983liability only if one of its policies caused the constitutional injury..*Swanigan v. City of Chicago*, 881 F.3d 577, 582 (7th Cir. 2018) (citing *Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)). The "official policy" analysis isolates ultimate responsibility for a claimed constitutional violation, distinguishing the acts of a municipality from the acts of its employees. *Estate of Sims ex rel. Sims v. County of Bureau*, 506 F.3d 509, 515 (7th Cir. 2007). A municipality's enforcement of a state law does not constitute an actionable official policy. *See Surplus Store & Exchange, Inc. v. City of Delphi*, 928 F.2d 788, 791 (7th Cir. 1991)("It is difficult to imagine a municipal policy more innocuous and constitutionally permissible, and whose causal connection to the alleged violation is more attenuated, than the 'policy' of enforcing state law.").

***520** The City's police department did not enforce a Chicago ordinance or other municipal policy; rather, this suit challenges a state law. The City can be held liable only if it has "as a matter [of] policy or custom, enforce[d] the law in a manner or method that caused the constitutional violation." *Id.* Vasquez and Cardona contend that the City exercises discretion in enforcing the residency statute—for example, by checking for compliance annually when sex offenders register and by giving sex offenders 30 days' notice to move. But the complaint does not allege a causal connection between the City's compliance monitoring and the plaintiffs' constitutional injury. *Id.* at 790. The plaintiffs do face a continuing threat of prosecution if they fail to comply with the 2008 amendment, but the State's Attorney is the proper defendant to sue for redress of that injury. For this independent reason, which the City preserved below but the judge did not need to address, the plaintiffs failed to state a claim against the City.

A. Ex Post Facto Clause

5,6 The Ex Post Facto Clause[3] forbids retroactive punishment—that is, "the imposition of punishment more severe than the punishment assigned by law when the act to be punished occurred." *Weaver v. Graham*, 450 U.S. 24, 30, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981). So a statute is not an impermissible ex post facto law unless it is *both* retroactive *and* penal. *United States v. Leach*, 639 F.3d 769, 773 (7th Cir. 2011).

7 Our decision in *Leach* is conclusive on the retroactivity question. There we considered an ex post facto challenge to the federal Sex Offender Registration and Notification Act ("SORNA"). *Id.* at 770–71. Enacted in 2006, SORNA requires all convicted sex offenders—including those who were convicted before the Act was adopted—to register in each jurisdiction where they live, work, or attend school; the Act also imposes criminal penalties for failure to register or update a registration following interstate travel. *Id.* at 771 (citing 42 U.S.C. § 16913(a) and 18 U.S.C. § 2250(a)). Donald Leach was convicted of child molestation in 1990, long before SORNA came into being, and he was charged with failing to

update his registration when he moved to another state. He argued that SORNA could not be applied to him because it retroactively increased his punishment in violation of the Ex Post Facto Clause.

We rejected that argument and affirmed Leach's conviction. We began by noting that SORNA's registration duty and the criminal penalty for failure to comply are plainly *prospective* in operation. In other words, the new regulatory scheme applies only to conduct occurring *after* the law's enactment—that is, a sex offender's failure to register or update his registration following interstate travel. Accordingly, we held that SORNA "merely creates new, prospective legal obligations based on the person's prior history." *Id.* at 773.

So too here. Although the 2008 amendment to the Illinois residency statute applies to Vasquez, Cardona, and others like them who were convicted of child sex offenses before the amendment was adopted, its requirements and any criminal penalty apply only to conduct occurring *after* its enactment—i.e., knowingly maintaining a residence within 500 feet of a child day-care home or group day-care home.

8 We also held in *Leach* that under *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003), SORNA's registration regime for sex offenders is not penal in nature. *Id. Smith* upheld Alaska's sex-offender **521* registration statute against an ex post facto challenge. The Court found that the Alaska registration regime was a nonpunitive civil regulatory scheme and thus raised no ex post facto concerns. 538 U.S. at 105–06, 123 S.Ct. 1140. Because SORNA is indistinguishable from the Alaska statute upheld in *Smith*, we concluded in *Leach* that the federal law is likewise a civil regulatory scheme and not a penal statute. 639 F.3d at 773.

Again, the same is true here. The Illinois residency statute is similar enough to the sex-offender registration statutes at issue in *Smith* and *Leach* that it's safe to apply those holdings and reject the plaintiffs' challenge without further ado. If more is needed, we briefly address the two-step framework the Court used in *Smith* and explain why the Illinois residency statute is not punitive under that test.

The Court's framework asks if the legislature intended to impose punishment, and if not, whether the civil regulatory scheme is "so punitive either in purpose or effect as to negate" the legislature's nonpunitive intent. *Smith*, 538 U.S. at 92, 123 S.Ct. 1140(quotation marks omitted). Vasquez and Cardona do not argue that the Illinois legislature intended to impose additional punishment, so we skip directly to the second step. To determine if Alaska's registration law was punitive in effect, the Court examined several factors: whether the regulatory regime "in its necessary operation ... [would be] regarded in our history and traditions as a punishment[,] imposes an affirmative disability or restraint[,] promotes the traditional aims of punishment[,] has a rational connection to a nonpunitive purpose[,] or is excessive with respect to this purpose." *Id.* at 97, 123 S.Ct. 1140. The Court assigned no particular priority or weight to any of these factors: they are "neither exhaustive nor dispositive" but merely "relevant." *Id.*

As for the first factor, Vasquez and Cardona compare the Illinois residency restrictions to the historical punishments of shaming and banishment. As the Court noted in *Smith*, however, early shaming punishments "inflict[ed] public disgrace," and "[t]he aim was to make these offenders suffer permanent stigmas, which in effect cast the person out of the community." *Id.* at 97–98, 123 S.Ct. 1140 (internal quotation marks omitted). The Alaska registration requirement did not shame child sex offenders in this way, *id.*, and neither do the Illinois residency restrictions. Nor do the residency restrictions resemble banishment. Under that early form of punishment, "[t]he most serious offenders ... could neither return to their original community nor, reputation tarnished, be admitted easily into a new one." *Id.* (citing THOMAS G. BLOMBERG & KAROL LUCKEN, AMERICAN PENOLOGY: A HISTORY OF CONTROL 30–31 (2000)). The Illinois residency statute merely keeps child sex offenders from living in very close proximity to places where children are likely to congregate; it does not force them to leave their communities.

Vasquez and Cardona also compare the residency restrictions to criminal punishments such as probation and supervised release. The comparison is inapt; the Court rejected it in *Smith*, noting that "offenders subject to the Alaska statute are free to move where they wish and to live and work as other citizens[ ] with no supervision." *Id.* at 101, 123 S.Ct. 1140. Although the Illinois residency restrictions limit where sex offenders may live, the statute does not control any other aspect of their lives and thus does not resemble the comprehensive control of probation and supervised release.

The Court also examined the extent to which the Alaska law imposed an affirmative disability or restraint on sex offenders, ***522** observing that "[i]f the disability or restraint is minor and indirect, its effects are unlikely to be punitive." *Id.* at 100, 123 S.Ct. 1140. We accept for present purposes that Vasquez and Cardona have had difficulty finding suitable compliant housing in their neighborhoods. We also recognize that including child day-care homes within the 500–foot buffer zone creates somc unpredictability: schools and playgrounds are typically known and fixed, but a private residential property can become a day-care home without anyone in the neighborhood noticing. However, like the registration scheme at issue in *Smith*, the residency law "imposes no physical restraint[ ] and so does not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint." *Id.*

Another relevant factor in the *Smith* framework is whether the statute promotes the traditional aims of punishment, but the Court strictly limited the scope of this inquiry, asking only whether the law is retributive. 538 U.S. at 102, 123 S.Ct. 1140. Vasquez and Cardona do not develop an argument on this point, perhaps because the residency restrictions are so clearly *not* retributive. As in *Smith*, the obvious aim of the statute is to protect children from the danger of recidivism by convicted child sex offenders. *Id.*

The last two factors in the *Smith* framework are related: the Court asked whether the Alaska statute was rationally connected to a nonpunitive purpose and whether its requirements were excessive with respect to that purpose. *Id.* at 103, 123 S.Ct. 1140. At this step of the analysis, the challenger is required to show that the statute's "nonpunitive purpose is a sham or mere pretext." *Id.* (internal quotation marks omitted). Vasquez and Cardona maintain that sex offenders do not reoffend more than other criminals. Even if we accept that assertion, similar recidivism rates across different categories of crime would not establish that the nonpunitive aim of this statute—protecting children—is a sham. Indeed, *Smith* holds that states may make "reasonable categorical judgments ... without any corresponding risk assessment." *Id.* at 103–04, 123 S.Ct. 1140.

In short, under *Smith* and *Leach*, the 2008 amendment to the sex-offender residency statute is neither retroactive nor punitive and thus raises no ex post facto concerns.[4]
The judge was right to dismiss this claim.

B. Takings Clause

9 Next, Vasquez and Cardona argue that the judge wrongly dismissed their claim that the 2008 amendment effectively "takes" their property without just compensation in violation of the Fifth Amendment's Takings Clause. But neither plaintiff pursued state remedies prior to filing ***523** this suit, and current law requires exhaustion of state mechanisms for obtaining compensation before a takings claim can be brought in federal court. *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).[5]

10 To exhaust a takings claim, the plaintiff must seek relief in state court unless doing so would be "futile." *Peters v. Village of Clifton*, 498 F.3d 727, 732 (7th Cir. 2007). Relying on *Callahan v. City of Chicago*, 813 F.3d 658 (7th Cir. 2016), the judge assumed that the Illinois state courts could not provide relief for this claim. In *Callahan*, however, we accepted Chicago's concession that a suit for relief on a takings claim in an Illinois state court would be futile. *Id.* at 660. Foxx has not made a similar concession

here And as we explained in *Sorrentino v Godinez*, 777 F 3d 410, 413 (7th Cir 2015), the Illinois Court of Claims can provide damages for a regulatory taking. By failing to seek damages in state court, the plaintiffs have not exhausted their challenge to the residency requirements [6]

11,12,13 Even if we looked past this procedural barrier, the takings claim would fail on the merits Under the Supreme Court's *Penn Central* test, we're instructed to examine "(1) the nature of the government action, (2) the severity of [its] economic impact on the [property] owner, and (3) the degree of interference with the owner's reasonable investment-backed expectations." *Bettendorf v St Croix County*, 631 F.3d 421, 430 (7th Cir. 2011) (internal quotation marks omitted). On the first of these factors, a taking "may more readily be found when the interference with property can be characterized as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn Central*, 438 U.S. at 124, 98 S.Ct. 2646 (citation omitted). Although the Illinois law restricts a child sex offender's use of his property, it cannot be characterized as a physical invasion. The law merely adjusts the benefits and burdens of economic life

Moving on to the economic impact of the 2008 amendment, we keep in mind that a regulation does not amount to a taking simply because the property owner can no longer make the "most beneficial use of the property." *Id.* at 125, 98 S.Ct. 2646. Even the denial of a traditional property right does not necessarily amount to a taking. For example, in *Andrus v Allard*, 444 U.S. 51, 65–66, 100 S.Ct. 318, 62 L Ed.2d 210 (1979), the Supreme Court held that a law preventing the sale of certain artifacts did not amount to a taking of property within the meaning of the Fifth Amendment. The Court emphasized that the regulation did not compel the surrender of the artifacts and that the owners could still derive some economic benefit by "exhibit[ing] the artifacts for an admissions charge." ***524** *Id.* at 66, 100 S.Ct. 318. The economic impact of the 2008 amendment to the Illinois residency statute is minimal in comparison to *Andrus*. Although Vasquez and Cardona cannot reside within the 500–foot buffer zone, there is no question that many others can, leaving open a broad market to sell or sublease their residences at full market value.

The third factor in the *Penn Central* analysis seals the fate of the plaintiffs' takings claims. We're instructed to look at their "expectation concerning the use of the parcel" and whether they can obtain a "reasonable return" on their investment. *Penn Central*, 438 U.S. at 136, 98 S.Ct. 2646. Vasquez and Cardona assert that they had no reasonable expectation they would have to move They rely on *Mann v Georgia Department of Corrections*, 282 Ga. 754, 653 S.E.2d 740 (Ga. 2007), which held that a sex-offender residency statute "positively precludes appellant from having any reasonable investment-backed expectation in any property purchased as his private residence." *Id* at 744. But *Penn Central* simply does not support this expansive understanding of a property owner's investment-backed expectations

A properly focused inquiry looks to the effect of the 2008 amendment on the plaintiffs' property-rights expectations. And because the amendment was on the books when Cardona purchased his home and Vasquez leased his apartment, its terms were necessarily part of any property-rights expectations they could have held. That's enough to doom this takings claim on the merits *See, e g , Goodpaster v City of Indianapolis*, 736 F.3d 1060, 1074 (7th Cir. 2013) (holding that the bar owners' reasonable expectations included the expansion of the smoking ban), *Rancho de Calistoga v City of Calistoga*, 800 F 3d 1083, 1091 (9th Cir. 2015) ("[T]hose who buy into a regulated field . cannot object when regulation is later imposed.").

C. Procedural Due Process

14 The procedural aspect of the due-process claim rests on the plaintiffs' allegation that the 2008 amendment is unconstitutionally enforced against them without a hearing or other procedure to determine whether they actually pose a continued threat to children This claim is squarely foreclosed by *Connecticut Department of Public Safety v Doe*, 538 U S 1, 123 S.Ct. 1160, 155 L Ed.2d 98 (2003)

There the Supreme Court considered whether a sex-offender registration statute required a determination that the offender was currently dangerous. *Id.* at 4, 123 S.Ct. 1160. The answer was "no." The Court reasoned that "due process does not require the opportunity to prove a fact that is not material to the State's statutory scheme." *Id.*; *see also id.* at 8, 123 S.Ct. 1160 (Scalia, J., concurring) ("[A] validly enacted statute suffices to provide all the process that is 'due ....' "); *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445, 36 S.Ct. 141, 60 L.Ed. 372 (1915) ("General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard."). The Illinois statute places residency restrictions on *all* child sex offenders regardless of their individual risk of recidivism. Vasquez and Cardona are not entitled to a hearing for an individualized risk assessment.

D. Substantive Due Process

15 Finally, Vasquez and Cardona argue that the 2008 amendment to the residency statute is substantively unconstitutional. They urge us to apply heightened scrutiny, claiming that the residency requirements were enacted out of pure animus toward child sex offenders, a politically unpopular group. *See, e.g.*, ***525** *United States v. Windsor*, 570 U.S. 744, 770, 133 S.Ct. 2675, 186 L.Ed.2d 808 (2013); *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 556–58, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973). Heightened scrutiny does not apply. The residency statute is facially neutral and advances a compelling governmental interest: protecting children from recidivism by child sex offenders. The plaintiffs also press for heightened scrutiny because the statute infringes their fundamental right to "establish a home." *See Washington v. Glucksberg*, 521 U.S. 702, 761, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). This argument is meritless. A law limiting where sex offenders may live does not prevent them from establishing a home; it just constrains where they can do so.

This law triggers only rational-basis review, so we ask whether its intrusion upon liberty is rationally related to a legitimate governmental interest. *Hayden ex rel. A.H. v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 576 (7th Cir. 2014). No one questions that protecting children from child sex offenders is a legitimate governmental interest; indeed, it is a compelling interest. *See Doe v. City of Lafayette*, 377 F.3d 757, 773 (7th Cir. 2004) (holding that the City's interest in protecting minors from child sex offenders is "not merely legitimate, it is compelling"). The plaintiffs thus "have the burden to negate every conceivable basis [that] might support [the statute]." *Goodpaster*, 736 F.3d at 1071 (internal quotation marks omitted).

It's self-evident that creating a buffer between a child day-care home and the home of a child sex offender may protect at least some children from harm. Indeed, as the Supreme Court explained in *Smith*, a state legislature "could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism." 538 U.S. at 103, 123 S.Ct. 1140. Vasquez and Cardona insist that "scant evidence" supports the public-safety rationale of this statute; they also argue that the harsh burdens placed on sex offenders are highly disproportionate to any benefit. But our role is not to second-guess the legislative policy judgment by parsing the latest academic studies on sex-offender recidivism. *See Goodpaster*, 736 F.3d at 1071 ("Under rational basis review, a state law is constitutional even if it is unwise, improvident, or out of harmony with a particular school of thought.") (internal quotation marks omitted). This residency restriction on child sex offenders cannot be called irrational.

AFFIRMED.

Footnotes

*Circuit Judge Amy J. St. Eve took no part in the consideration of the petition for rehearing en banc.

1 Anita Alvarez was the Cook County State's Attorney when the suit was filed. Foxx replaced her in that office on December 1, 2016, and was substituted as a defendant. *See* FED. R. CIV. P. 25(d).

2 The complaint alleges that Cardona's conviction requires him to register as a sex offender through 2017. Although his registration duty has expired, he remains subject to the residency restrictions.
3 "No ... ex post facto Law shall be passed." U.S. CONST. art. I, § 9, cl. 3.
4 Vasquez and Cardona rely heavily on the Sixth Circuit's decision in *Does #1–5 v. Snyder*, 834 F.3d 696 (6th Cir. 2016), but that case is easily distinguishable. The plaintiffs there challenged a series of amendments to the Michigan sex-offender registration law, which the court characterized as imposing "a byzantine code governing in minute detail the lives of the state's sex offenders." *Id.* at 697. The challenged provisions included a residency restriction prohibiting sex offenders from "living, working, or 'loitering' within 1,000 feet of a school." *Id.* at 698. The plaintiffs also challenged a provision publicly classifying registrants "into three tiers, which ostensibly correlate to current dangerousness, but which are based[ ] not on individual assessments, but solely on the crime of conviction." *Id.* Finally, the plaintiffs challenged a provision requiring registrants to "appear in person 'immediately' to update information such as new vehicles or 'internet identifiers.' " *Id.* The court considered these provisions collectively and concluded that this package of civil regulatory restrictions were punitive in effect. *Id.* at 702–06. The single 2008 amendment at issue in this case does not remotely compare.
5 *Williamson County* has been criticized, and the Supreme Court may revisit and overrule it next term. *Knick v. Township of Scott*, 862 F.3d 310 (3d Cir. 2017), *cert. granted*, —— U.S. ——, 138 S.Ct. 1262, 200 L.Ed.2d 416 (Mem.) (2018). For now it remains good law.
6 Vasquez and Cardona argue that if they cannot proceed on an as-applied takings claim, they should be permitted to raise a facial takings claim. This argument is based on a line of caselaw holding that a facial takings challenge need not meet the *Williamson County* exhaustion requirement. *Peters v. Village of Clifton*, 498 F.3d 727, 732 (7th Cir. 2007). But Vasquez and Cardona did not develop an argument that the 2008 amendment is facially unconstitutional under the Takings Clause. The issue is therefore waived. *See Judge v. Quinn*, 612 F.3d 537, 557 (7th Cir. 2010).

43 F.4th 747
United States Court of Appeals, Seventh Circuit.

KarstenKOCH, Plaintiff-Appellant,

v.

VILLAGE OF HARTLAND,

Defendant-Appellee.

No. 22-1007

Argued May 27, 2022

Decided August 8, 2022

*** Start Section

...

[11] **Federal Courts** Need for further evidence, findings, or conclusions

Remand to district court, rather than analysis by Court of Appeals, was required for determination of whether village's sex-offender ordinance, imposing moratorium against any new sex offenders residing in village, was penal in nature, as could violate ex post facto clause; inquiry was fact-intensive, and ordinance at issue differed from the laws involved in Court of Appeals' prior cases. U.S. Const. art. 1, § 10, cl. 1.

1 Case that cites this headnote

*748 Appeal from the United States District Court for the Eastern District of Wisconsin. No. 21-cv-503 — **William E. Duffin**, *Magistrate Judge.*

Attorneys and Law Firms

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Joseph M. Wirth, Attorney, Schmidt & Wirth Law Offices, Milwaukee, WI, for Defendant-Appellee.

Before St. Eve, Kirsch, and Jackson-Akiwumi, Circuit Judges.

Opinion

St. Eve, Circuit Judge.

The Village of Hartland, Wisconsin ("the Village") passed an Ordinance ("the Ordinance") placing a moratorium against any new sex offenders residing there, whether on a temporary or permanent basis. Karsten Koch is a registered sex offender who would like to move into the Village to be closer to work and family. He sued the Village over the Ordinance, asserting that it violated the Ex Post Facto Clause of Article I, Section 10 of the Constitution.

[1] A law must be both retroactive and penal to transgress the Ex Post Facto Clause. Ruling for the Village on cross-motions for summary judgment, the district court concluded that the retroactivity *749 rule from two Seventh Circuit opinions —*United States v. Leach*, 639 F.3d 769 (7th Cir. 2011) and *Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018)—controlled. Under this precedent, a law is not retroactive, and therefore cannot violate the Ex Post Facto Clause, if it applies "only to conduct occurring *after* its enactment." *Id.* at 520. The Ordinance, then, applied prospectively, and there was no need to determine whether it was also penal.

While the district court faithfully applied circuit precedent, we no longer believe the *Leach-Vasquez* rule governing retroactivity is tenable. We reverse and remand; the Ordinance is retroactive. The district court, on remand, must consider in the first instance whether it is "punitive."

I.

A.

On September 24, 2018, the Village of Hartland, Wisconsin enacted Ordinance No. 850-18, which prohibited the establishment of "Temporary or Permanent Residence" by a "Designated Offender," that is, a sex offender, within the Village "until such time as the saturation level for Designated Offenders in the Village of Hartland reaches a factor of 1.1 or lower ...." A sex offender is a "person who has been convicted of ... a sexually violent offense and/or a crime against children." The "saturation level" is

> determined by adding the number of Designated Offenders per square mile in Hartland plus the number of Designated Offenders per 1,000 population in Hartland and dividing

the resulting figure by the sum of the number of Designated Offenders per square mile in Waukesha County net of Hartland plus the number of Designated Offenders per 1,000 population in Waukesha County net of Hartland.

At the time the Ordinance went into effect, Hartland's saturation level was 6.75.

According to the Ordinance's "findings and intent" section, the Village recently learned that there were thirty-five sex offenders living within the Village, an allegedly high number compared to neighboring areas. The ordinance was a "regulatory measure aimed at protecting the health and safety of the children of the Village of Hartland from the risk that a convicted sex offender may re-offend in locations close to a Designated Offender's residence ...." The U.S. Supreme Court has "recognized that the risk of recidivism posed by sex offenders is high and when convicted sex offenders re-enter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault." That sex offenders "suffer a high rate of recidivism," the Village believed, "has a basis in fact," and they collectively "are a serious threat to public safety," pose specific dangers to children, and "are more likely to use physical violence." The "potential of psychological trauma to citizens of the Village is real but difficult to calculate."

The Village represents that the moratorium allows local police more time and flexibility in developing its dedicated community policing program to give officers a chance to monitor sex offenders, address experiences, and decrease "recidivism and community conflict." "As a result of the community policing program and the moratorium," the Village maintains, "resident designated offenders have not committed any sex offenses in the Village." The ordinance also gives more time to pass "a sex offender residency ordinance that will satisfy Constitutional requirements."

B.

Koch is a registered sex offender. Before the Ordinance was passed, he was ***750** convicted of one count of engaging in repeated acts of sexual assault on a child and two counts of second-degree sexual assault of a child. He served seven years in prison before being released. His convictions qualify him as a "Designated Offender" under the Ordinance.

Since his conviction, Koch has worked to get his life on a positive track. He found employment and now wishes to live in Hartland to be closer to work and family, as the Village provides more suitable rental properties than the town where he currently resides. A property owner was even willing to rent to Koch, but the Village's Ordinance prevents any landlord from doing so. Instead, Koch must continue to live with his parents and commute a longer distance to work.

C.

Koch sued the Village, alleging that the Ordinance deprived him of a constitutional right under the Ex Post Facto Clause by criminally punishing his conduct before its enactment. *See* 42 U.S.C. § 1983. Both parties moved for summary judgment, and the district court granted the Village's motion. The Ex Post Facto Clause proscribes "retroactive punishment." For a law to violate this protection, it must be retroactive and punitive. The district court only considered the retroactivity prong of the two-part test because two Seventh Circuit opinions—*Leach* and *Vasquez*—dictated the outcome. Under our precedent, a law creating only "new, prospective legal obligations" is not retroactive. Therefore, the Ordinance operates only prospectively because it "limits a Designated Offender's housing options based on [ ] prior history." "In other words, the Ordinance only applies to Koch's current desire to move to Hartland." The district court could not "accept Koch's invitation to reject *Leach* and *Vasquez* and follow the reasoning employed by other circuits when considering Ex Post Facto Clause challenges." And because the law was not retroactive, the district court did not need to consider whether it punished the targeted offenders.

[2] Koch filed a timely appeal. We review a grant of summary judgment de novo, drawing all reasonable inferences "in the light most favorable to the nonmoving party on each motion." *Birch Rea Partners, Inc. v. Regent Bank*, 27 F.4th 1245, 1249 (7th Cir. 2022) (quoting *Lalowski v. City of Des Plaines*, 789 F.3d 784, 787 (7th Cir. 2015)).

II.

The Constitution provides that "[n]o State shall ... pass any ... ex post facto Law," U.S. Const. art. I, § 10, cl. 1, defined as an act that "retroactively alter[s] the definition of crimes or increase[s] the punishment for criminal" deeds, *Cal. Dep't of Corr. v. Morales*, 514 U.S. 499, 504, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995) (citing *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 391–92, 1 L.Ed. 648 (1798)). *See also* U.S. Const. art.

I, § 9, cl 3 ("No ex post facto Law shall be passed") "Statutes that transgress the Ex Post Facto Clause [ ] share two characteristics They are '*both* retroactive *and* penal' " *Hope v Comm'r of Ind. Dep't of Corr*, 9 F 4th 513, 530 (7th Cir 2021) (en banc) (quoting *Vasquez*, 895 F 3d at 520)

A.

We have held that a regulatory scheme applying "only to conduct occurring *after* the law's enactment" is merely prospective and thus cannot violate the Ex Post Facto Clause *Vasquez*, 895 F.3d at 520 Koch concedes that under current precedent the Ordinance is not retroactive because it targets only future conduct, that is, taking up ***751** residency in the Village Nonetheless, he urges us to overturn this rule, which conflicts with the history and values of the Ex Post Facto Clause, Supreme Court precedent, and the consensus among other circuits and state courts We take this opportunity to overrule it [1]

1.

[3] The Ex Post Facto Clause safeguards the legal principle that there can be no punishment without law, *nulla poena sine lege* This maxim has a long history The Digest of Justinian, a sixth-century codification of Roman law, declared, "The penalty for a past wrong is never increased ex post facto" Robert G Natelson, *Statutory Retroactivity The Founders'*

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also Vartelas, 566 U S. at 273, 132 S.Ct. 1479 ("The essential inquiry . is 'whether the new provision attaches new legal consequences to events completed before its enactment.' " (quoting *Landgraf*, 511 U S at 269–70, 114 S Ct 1483))

* * *

"There is no question that the obligations imposed by" many sex-offender laws "apply retroactively" *Hope*, 9 F 4th at 535 (Scudder, J , concurring); *see also Does 1-5*, 834 F.3d at 698; *Shaw*, 823 F 3d at 560 The Village's Ordinance is one example It attaches new legal consequences to pre-Act conduct. *See Weaver*, 450 U S at 31, 101 S Ct 960 Specifically, those convicted of qualifying sex offenses now face additional burdens that did not exist at the time of their offenses, they cannot establish residence in the Village of Hartland [8]

***757 B.**

[9] [10] The retroactivity prong, though, is only half the analysis to violate the Ex Post Facto Clause, a law must also be punitive. *Hope*, 9 F 4th at 530 In determining whether a law is penal, courts employ the two-part "intent-effects test" *Id.* The first inquiry is "whether the legislature intended to enact a punitive, rather than a civil, law" *Id.* If not, the second inquiry is whether the law is "so punitive" in "effect as to negate [the State's] intention to deem it 'civil.' " *Smith*, 538 U S at 92, 123 S Ct 1140 Five factors inform the effects analysis· whether the law "[1] has been regarded in our history and traditions as a punishment, [2] imposes an affirmative disability or restraint; [3] promotes the traditional aims of punishment,

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. retroactive "countless laws that impose 'new disabilities' related to 'past events' " See *id.* at 281, 132 S Ct 1479 (Scalia, J , dissenting) Shrugging off the precedential effect of its holding, the majority does not attempt to explain why the sex offender statutes in *Leach* and *Vasquez* are retroactive but laws like 18 U.S C § 922(g)(1) or (g)(4) are not, discounting the latter laws because they are "not before us." Supra at 753 n 3 *Vartelas* provides the answer. These laws, and countless others like them, are not retroactive, because they "address dangers that arise postenactment" 566 U S at 271 n 7, 132 S Ct. 1479. Because I would recognize the *Weaver* retroactivity rule's obsolescence, leave be *Leach* and *Vasquez*, and apply *Vartelas*'s rule to find Hartland's ordinance retroactive, I concur only in the judgment

The majority opines, "[t]he clearest formulation of the retroactivity inquiry," supra at 752, comes from *Weaver* "The critical question is whether the law changes the legal consequences of acts completed before its effective date" *Weaver*, 450 U.S at 28, 101 S Ct 960 But that broad rule is not the most recent law on retroactivity In *Vartelas*, the Supreme Court limited *Weaver*, holding that certain laws otherwise satisfying *Weaver*'s boundaries are not retroactive when they target postenactment dangers *Vartelas*, 566 U.S at 271 n 7, 132 S Ct. 1479 (holding that the IIRIRA statute at issue operated retroactively ***758** because it did not target postenactment dangers)

The majority correctly notes that *Vartelas* did not involve an Ex Post Facto challenge like Koch's case does. But a law is retrospective or prospective Retroactivity cannot mean one thing for Ex Post Facto cases and another for general presumption-against-retroactivity cases Two circuits have applied *Vartelas*—without even mentioning *Weaver*—as the law of retroactivity in Ex Post Facto Clause cases See *United States v Elk Shoulder*, 738 F 3d 948, 958 (9th Cir 2013); *Bremer v Johnson*, 834 F.3d 925, 932 (8th Cir. 2016) [1]

The first question in determining whether a statute's application is prospective or retrospective is· What is the reference point—the "moment in time to which the statute's effective date is either subsequent or antecedent"? *Vartelas*, 566 U.S. at 277, 132 S Ct. 1479 (Scalia, J., dissenting). In his *Vartelas* dissent, Justice Scalia..

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from possessing firearms "target[s] a present danger, *i.e* , the danger posed by felons who bear arms")

The majority worries *Vartelas*'s rule might "render the Ex Post Facto Clause's protections a nullity" because legislatures would begin tailoring their laws to address postenactment dangers. Supra at 756 n.7. But what's wrong with legislatures' being more explicit about whether their laws are retrospective or prospective? Courts should encourage, not discourage, such legislative clarity. The majority does not explain why incentivizing legislative precision in tailoring is so problematic. And to the extent that *Vartelas*'s framework is a problem, it is a problem for the Court that wrote *Vartelas*, not this court.

Still, the rule announced in *Vartelas* makes clear that Hartland's Ordinance is retroactive. *Vartelas*, like this case, involved a law that restricted future movement based on past misconduct. The IIRIRA statute (8 U.S.C. § 1101(a)(13)(C)(v)) effectively precluded lawful foreign travel by lawful permanent residents convicted of certain crimes by making them ineligible for reentry at the conclusion of their foreign travel. In finding that the statute did not address a danger that arose postenactment, the Court explained, "[t]he act of flying to Greece ... does not render a lawful permanent resident like Vartelas hazardous." *Vartelas*, 566 U.S. at 271 n.7, 132 S.Ct. 1479. "[T]he reason for the 'new disability' imposed on [Vartelas] was not his lawful foreign travel[ ]" but his pre-IIRIRA conviction. *Id.* at 269, 132 S.Ct. 1479 "That past misconduct, in other words, not present travel, [wa]s the wrongful activity Congress targeted " *Id.* at 269–70, 132 S Ct. 1479. The same logic applies in full force to Hartland and Koch Koch is just as dangerous in Hartland as he is in other towns. The act of moving to Hartland does not render Koch more hazardous than he was wherever he lived previously. Hartland cannot say Koch's lawful travel is being targeted In fact, never does the Ordinance explain what postenactment danger it addresses. The one and only reason the Ordinance's plain text offers for its new residence regulations is the previous convictions of designated sex offenders The reference point is Koch's conviction. So the Ordinance does not address a postenactment danger but attaches a new disability (inability to move to Hartland postenactment) in respect to past misconduct (sex offense conviction preenactment). See *Vartelas*, 566 U.S. at 261, 132 S.Ct. 1479. Therefore, I agree with the result in this case.

Considering *Vartelas* makes clear the retroactivity of the Ordinance, there is no reason to overrule *Leach* and *Vasquez* Both were correctly decided under *Vartelas*'s postenactment dangers approach. The law at issue in *Leach* expressly addressed a future danger—unregistered sex offenders moving to a new jurisdiction. The registration requirements directly addressed the danger at issue—public ignorance of potentially dangerous sex offenders in the community. Cf. *Elk Shoulder*, 738 F.3d at 958 (finding nonretroactive the registration and notification provisions of the pre-SORNA. .

*** Start Section
... sex offenders living, working, or attending school in its area."). And the Illinois statute in *Vasquez* did the same thing in requiring that sex offenders could not live within 500 feet of day cares The new day care requirement explicitly addressed a postenactment peril recognized by the state—children in day cares in physical *760 proximity to sex offenders. Neither *Leach* nor *Vasquez* featured a law that imposed new obligations because of previous convictions. On the contrary, the laws in both cases plainly expressed that the reasons for the new obligations were to address present activity. Both cases survive under *Vartelas* because the laws in both cases were antecedent to the reference points—the postenactment dangers addressed.

But there's no doubt that Hartland's ordinance addresses no postenactment danger. It is not "impossible to square" this with the original *Vasquez* holding. See supra at 755 n 5 *Vartelas* instructs us to look at the purpose of the law The Illinois statute in *Vasquez* was tailored to address the specific problem of sex offenders' close physical proximity to daycares The Hartland ordinance never even attempts to

specify what the residence ban targets besides sex offender status.

Applying *Vartelas*, I agree the ordinance is retroactive and the case should return to the district court for a determination on punitiveness.

All Citations

43 F.4th 747

Footnotes

1 Because this opinion overrules circuit precedent, we circulated it to all active members of the court under Circuit Rule 40(e). A majority of judges did not wish to rehear the case en banc.

2 *See, e.g., Stogner*, 539 U.S. at 612, 123 S.Ct. 2446; *Smith v. Doe*, 538 U.S. 84, 92–95, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003); *Carmell*, 529 U.S. at 533, 120 S.Ct. 1620; *Morales*, 514 U.S. at 504–05, 115 S.Ct. 1597; *Collins v. Youngblood*, 497 U.S. 37, 41–42, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990); *Weaver*, 450 U.S. at 28, 101 S.Ct. 960; *Dobbert v. Florida*, 432 U.S. 282, 298, 97 S.Ct. 2290, 53 L.Ed.2d 344 (1977); *Lindsey v. Washington*, 301 U.S. 397, 401, 57 S.Ct. 797, 81 L.Ed. 1182 (1937); *Rooney v. North Dakota*, 196 U.S. 319, 324–25, 25 S.Ct. 264, 49 L.Ed. 494 (1905); *In re Medley*, 134 U.S. 160, 171, 10 S.Ct. 384, 33 L.Ed. 835 (1890); *Gut v. Minnesota*, 76 U.S. (9 Wall.) 35, 37, 19 L.Ed. 573 (1869); *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325–26, 18 L.Ed. 356 (1866).

...

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RONALD SCHROEDER,
Plaintiff,

v. **Case No. 20-CV-1066**

CITY OF MUSKEGO,
Defendant.

DECISION AND ORDER

Plaintiff Ronald Schroeder brings this §1983 action alleging that a City of Muskego ordinance regulating where sex offenders may live is unconstitutional. The ordinance applies to individuals who have been convicted of "a sexually violent offense and/or a crime against children." The "original domicile provision" of the ordinance prohibits an offender who was not domiciled in Muskego when he committed his most recent offense from ever living in the city. Another section prohibits offenders not subject to the original domicile provision from living within 1250 feet of certain specified locations where children gather.

In 2008, plaintiff was convicted of two counts of second-degree sexual assault, a sexually violent offense. In 2020, plaintiff asked the city attorney if he could live at the Muskego home of a friend. The city attorney explained to plaintiff the provisions of the ordinance and answered his question in the negative. Subsequently, plaintiff commenced the present action, and the parties now cross-move for summary judgement.

Defendant raises two preliminary issues. First, defendant suggests that the case may be moot because plaintiff is currently in jail awaiting trial on a first degree reckless homicide charge arising out of an incident alleged to have occurred several decades ago.

Defendant argues that because of the pending case, plaintiff may never be able to live in Muskego. If, however, "there exists some cognizable danger of recurrent violation," plaintiff's request for injunctive relief is not moot. *Wernsing v. Thompson*, 423 F. 3d 732, 745 (7th Cir. 2005). Plaintiff states that he wishes to live in Muskego and, if and when he does, defendant will likely apply the ordinance to him. And the possibility that he will be convicted does not eliminate the likelihood that the ordinance will come into play. Plaintiff's bail is set at $35,000, and plaintiff argues he might make bail. Also, the offense with which he is charged does not call for life imprisonment. Thus, there is a cognizable danger that the issue presently before me will recur. Finally, even if plaintiff's claim for injunctive relief were moot, plaintiff also seeks damages because defendant previously prohibited him from moving into Muskego. Defendant contends that such damages would be limited but even a claim for nominal damages suffices to keep plaintiff's suit alive. *Uzueqbunam v. Preczowski*, 141 S. Ct. 792, 801-02 (2021). Thus, plaintiff's claim is not moot.

Defendant also argues that I should not consider some of the evidence submitted by plaintiff because plaintiff failed to provide an accompanying verifying affidavit. But most of the evidence in question is properly before me via another route, either because defendant also submitted it or because it is a public record. And, I did not consider the remaining documents submitted by plaintiff. Thus, this argument fails.

I turn now to the summary judgment motions. Summary judgment is required where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). I address first the question of whether the original domicile provision, which bars plaintiff living in Muskego for the rest of his life,

violates the Ex Post Facto clause found in Article I, section 10, clause 1 of the Constitution. The Ex Post Facto clause prohibits governmental units from enacting ordinances which "retroactively alter the definitions of crimes or increase the punishment for criminal acts." *Hope v. Comm'r of Ind Dept. of Corr.* 9 F.4th 513, 530 (7th Cir. 2021) (quoting *Cal. Dep't of Corr. v. Morales*, 514 U.S. 499, 504 (1995)). To violate the clause, an ordinance must be both retroactive and punitive. The parties agree that the original domicile provision is retroactive because it applies to acts committed before it took effect. *Koch v. Village of Hartland*, 43 F. 4th 747, 756 (7th Cir. 2022). The question is whether the provision is also punitive.

In *Smith v. Doe*, 538 U.S. 84 (2003), the Supreme Court outlined an approach to assessing whether a law is punitive, which the Seventh Circuit has applied to ordinances regulating where sex offenders may live. *Vasquez v. Foxx*, 895 F.3d 515, 520–21 (7th Cir. 2018). The initial inquiry is whether the legislature intended the ordinance to impose punishment or to establish a civil regulatory scheme. But even if the legislature intended to create a civil nonpunitive regulatory scheme, the court must ask "whether the statutory scheme is 'so punitive either in purpose or effect as to negate [the State's] intention to deem it civil.'" *Smith*, 538 U.S. at 92 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 361(1997)). Only the "clearest proof" can override the legislature's stated intent and "transform what has been denominated a civil remedy into a criminal penalty." *Id.* (quoting *Hudson v. United States*, 522 U.S. 93, 100 (1997)).

In the present case, plaintiff concedes that defendant's stated intent was to create a civil regulatory scheme. Indeed, the ordinance has a "Findings and Intent" section in which defendant disclaims any punitive intent. City. Ord. § 294-1(C). In analyzing whether

the effect of the ordinance is nevertheless punitive, I consider five factors that the *Smith* Court borrowed from *Kennedy v. Mendoza–Martinez*, 372 U.S. 144, 168–169 (1963). *Smith*, 538 U.S. at 97. These factors include: (1) whether the law's burden "has been regarded in our history and traditions as a punishment;" (2) whether the law imposes "an affirmative disability or restraint;" (3) whether the law "promotes the traditional aims of punishment;" (4) whether the law "has a rational connection to a nonpunitive purpose;" and (5) whether the law "is excessive with respect to [its nonpunitive] purpose." *Id.* These factors are not exhaustive or dispositive but merely relevant. *Vasquez*, 895 F.3d at 521. I turn now to a consideration of these factors.

Plaintiff argues that the original domicile provision is punitive because it is much like banishment, a traditional punishment expelling an individual from a community. The closest case that I have found to the one before me is *Hoffman v. Village of Pleasant Prairie*, 249 F.Supp. 3d 951 (E.D. Wis. 2017), which considered an ordinance prohibiting offenders from living in a village and also requiring offenders who lived in rental property to leave within six months. *Id.* at 958. The court concluded that the ordinance amounted to banishment. *Id.* I reach the same conclusion. Because the original domicile provision bars plaintiff from living in Muskego for the rest of his life, it sufficiently resembles banishment to support a finding that the provision is punitive.

Defendant argues that the ordinance does not resemble banishment because it does not bar plaintiff from spending time in the city. But courts have recognized that schemes that fall short of a complete ban on entering a jurisdiction but still impose severe residency restrictions can amount to banishment. *See Does 1-5 v. Snyder*, 834 F.3d 696, 705 (6th Cir. 2016); *Hoffman*, 249 F.Supp.3d. at 958; *In re Taylor*, 343 P.3d 867, 1038

(Cal. 2015). The residency restriction imposed by the original domicile provision, namely a total and permanent ban on residency anywhere in Muskego, is severe enough to qualify.

Plaintiff also argues that the original domicile provision is an affirmative disability or restraint. "The boundaries of this factor are undefined," and "[o]utside the 'paradigmatic' example of physical restraint, it is not evident what statutory requirements amount to a restraint or disability." *Hope*, 9 F.4th at 532. Thus, I cannot say that this factor weighs heavily in either party's favor.

Next, plaintiff contends that the ordinance promotes the traditional punitive aims of retribution and deterrence because the restrictions are imposed based solely on the basis of a person's having been convicted of a crime in the past. However, all laws regulating sex offenders impose burdens based on past convictions. This is simply their nature.

The requirement that a law have a rational connection to a nonpunitive purpose is easily met in that the legislature's justification for the provision need only rise above a mere "sham." *Vasquez*, 895 F.3d at 522. Defendant asserts that the nonpunitive purpose of the residency ban is to protect children in particular and the community in general. This justification arises above a mere sham.

The final *Smith* factor requires an examination of whether the requirements of the provision are excessive with respect to its non-punitive purpose. The issue "is whether the regulatory means chosen are reasonable in light of the nonpunitive objective." *Smith*, 538 U.S. at 105. To avoid an excessive effect, a law having a particularly harsh impact, i.e. one akin to banishment, might provide for an individualized assessment. This would help to ensure that the law was rationally related to a non-punitive purpose. See *Shaw v.*

Patton, 823 F. 3rd 556, 575 (10th Cir. 2016, see also *Smith*, 538 U.S. at 104); *Weems v. Little Rock Police Dept.*, 453 F. 3rd 1010, 1017 (8th Cir. 2006).

Although the ordinance is rationally connected to a nonpunitive purpose, the burden it imposes is unreasonable in light of its objective. The imbalance between the severity of the burden, a permanent residency ban, and the public safety benefit of the ordinance is stark. Also, the ordinance does not permit an individualized assessment of the risk posed by an offender. Taken together, the severity of the ordinance's impact, the absence of exceptions or of the opportunity for an individualized assessment or of a right to appeal suggest that the ordinance is excessive with respect to its nonpunitive purpose.

Based on the *Smith* factors as discussed above, I conclude the effect of the original domicile provision is sufficiently punitive to negate the city's intention to deem it civil. The provision is too close to banishment to survive. Because I have found that this provision violates the Ex Post Facto clause, I need not consider plaintiff's arguments that it also violates substantive due process and equal protection of the law.

Plaintiff also challenges Muskego's residency restrictions beyond the original domicile provision. He argues that two aspects of the restrictions violate the Fourteenth Amendment's guarantee of substantive due process: (1) the ordinance's "unprecedented array of prohibited locations;" and (2) the ordinance's application to individuals who have never committed an offense against a child. Plaintiff concedes that these provisions are subject to rational basis review. Under the rational basis test, a law is valid if "its intrusion upon liberty is rationally related to a legitimate governmental interest." *Vasquez*, 895 F.3d at 525. "[S]ubstantive due process requires only that the statutory imposition not be completely arbitrary and lacking any rational connection to a legitimate government

interest." *Turner v. Glickman*, 207 F.3d 419, 426 (7th Cir. 2000). Plaintiff contends that I should apply a "more searching form" of rational basis review because sex offenders are an unpopular minority. The Seventh Circuit, however, has rejected similar arguments. *See, e.g., Vasquez*, 895 F.3d at 524-25; *Valenti v Lawson*, 889 F.3d 427, 430 (7th Cir. 2018).

The ordinance seeks to advance public safety, particularly as regards minors. Protecting the public from recidivism by sex offenders is a legitimate governmental interest. *Smith*, 538 U.S. at 93. Moreover, prohibiting sex offenders from residing near schools, day cares, parks and similar facilities is rationally related to that interest. *See, e.g., Hope*, 9 F.4th at 533. Plaintiff argues that the ordinance in the present case fails because it also prohibits residency near sites not principally used by children such as golf courses and conservation areas. But defendant states that it chose the protected locations because all are places where children sometimes congregate. That adults also appear at such locations does not establish that the ordinance is not rationally related to a legitimate governmental interest. Nor is defendant's failure to present scholarship supporting its selection of exclusion zones fatal to the ordinance. The rational basis test does not require legislative bodies to present empirical evidence supporting its choices. Plaintiff also points to literature indicating that residency restrictions are ineffective. The Seventh Circuit, however, has held that a legislature may rationally conclude such restrictions protect the public. *Hope*, 9 F.4th at 533-34; *Vasquez*, 895 F.3d at 522.

Finally, plaintiff contends that residency restrictions are irrational because they apply to sex offenders who have never committed an offense involving a minor. Defendant responds that it is not irrational to conclude that sex offenders who target

adults might also target minors and cites several studies that arguably support that position. I cannot say that because the ordinance targets sex offenders who have not previously assaulted children, it is not rationally related to a legitimate governmental interest. Thus, for the foregoing reasons, the residency requirements other than the original domical provision survive rational basis review.

For the reasons stated, **IT IS ORDERED** that plaintiff's motion for summary judgment at ECF no. 32 is **GRANTED IN PART** and **DENIED IN PART** as explained above.

IT IS FURTHER ORDERED that defendant's motion for summary judgment at ECF no. 26 is **GRANTED IN PART** and **DENIED IN PART** as explained above.

IT IS FURTHER ORDERED that plaintiff's motions for leave to file excess pages at ECF nos. 33 and 39 are **GRANTED.**

Dated at Milwaukee, Wisconsin, on this 21st day of November, 2022.

s/Lynn Adelman
LYNN ADELMAN
United State District Judge

78 F.4th 389
United States Court of Appeals, Seventh Circuit.

Peter NELSON, Plaintiff-Appellant,

v.

TOWN OF PARIS, Defendant-Appellee.

No. 22-2435

Argued February 23, 2023

Decided August 16, 2023

Synopsis

Background: Sex offender filed § 1983 action alleging that town ordinance imposing residency restrictions on him violated Due Process Clause and Ex Post Facto Clause. The United States District Court for the Eastern District of Wisconsin, Lynn Adelman, J., 616 F.Supp.3d 844, entered summary judgment in town's favor, and offender appealed.

Holdings: The Court of Appeals, Lee, Circuit Judge, held that:

[1] ordinance did not resemble traditional punishment of supervised release;

[2] provision prohibiting sex offenders from residing within 6,500 feet of protected location did not resemble traditional punishment of banishment;

[3] provision prohibiting sex offenders from residing within 6,500 feet of another designated offender resembled traditional punishment of banishment;

[4] ordinance did not impose any affirmative disabilities or restraints significant enough to constitute "punishment";

[5] protected location provision was not excessive with respect to its nonpunitive purpose;

[6] fact issues remained as to whether designated offender provision was reasonably related to town's legitimate interest in protecting its children; and

[7] ordinance did not violate offender's substantive due process rights.

Affirmed in part, vacated in part, and remanded.

West Headnotes (19)

[1] **Federal Courts** Summary judgment

Federal Courts Summary judgment

Court of Appeals reviews district court's order granting summary judgment de novo, viewing all facts and making all reasonable inferences in light most favorable to nonmovant.

[2] **Constitutional Law** Penal laws in general

Law violates Ex Post Facto Clause if it is both retroactive and penal in nature. U.S. Const. art. 1, § 10, cl. 1.

1 Case that cites this headnote

[3] **Constitutional Law** Penal laws in general

Law is "punitive," for purposes of Ex Post Facto Clause, if: (1) legislature intended to enact punitive, rather than civil, law, or (2) law is so punitive either in purpose or effect as to negate legislature's intention to deem it civil. U.S. Const. art. 1, § 10, cl. 1.

1 Case that cites this headnote

[4] **Constitutional Law** Penal laws in general

Constitutional Law Punishment in general

Inquiry as to whether statute is punitive, for purposes of determining whether it violates Ex Post Facto Clause, requires consideration of five factors: whether law (1) has been regarded in history and traditions as punishment; (2) imposes affirmative disability or restraint; (3) promotes traditional aims of punishment; (4) has rational connection to nonpunitive purpose; or (5) is excessive with respect to this purpose. U.S. Const. art. 1, § 10, cl. 1.

2 Cases that cite this headnote

[5] **Constitutional Law** Penal laws in general

When considering whether law is punitive, rather than civil, for purposes of determining whether it violates Ex Post Facto Clause, court may not focus on effect that law has on single individual, but instead must consider whether law is punitive on its face. U.S. Const. art. 1, § 10, cl. 1.

1 Case that cites this headnote

[6] **Constitutional Law** Penal laws in general

Constitutional Law Punishment in general

Civil scheme may be punitive, rather than civil, for purposes of determining whether it violates Ex Post Facto Clause, when it resembles traditional forms of punishment: those that hold person up before his fellow citizens for face-to-face shaming or expel him from community, such as public shaming, humiliation, and banishment. U.S. Const. art. 1, § 10, cl. 1.

[7] **Constitutional Law** Punishment in general

Law need not impose burdens identical to traditionally recognized form of punishment in order to be "punitive" for Ex Post Facto Clause purposes, so long as burdens sufficiently resemble those typically associated with that punishment. U.S. Const. art. 1, § 10, cl. 1.

[8] **Constitutional Law** Sex Offenders

Mental Health Effect of assessment or determination; notice and registration

Town ordinance prohibiting sex offenders from residing within 6,500 feet of protected location or another sex offender did not resemble traditional punishment of supervised release, for purposes of determining whether it was punitive in nature for Ex Post Facto Clause purposes; restrictions controlled only where designated offenders could live, not any other aspects of their lives, such as where they could work or congregate, or with whom they could interact, and designated offender's violation of ordinance did not subject him to revocation, but instead to separate fine untethered to his original offense. U.S. Const. art. 1, § 10, cl. 1.

2 Cases that cite this headnote

[9] **Constitutional Law** Punishment in general

Civil scheme resembles traditional punishment of banishment, for Ex Post Facto Clause purposes, when it forces individuals to leave their communities or to have difficulty finding new one. U.S. Const. art. 1, § 10, cl. 1.

[10] **Constitutional Law** Sex Offenders

Mental Health Effect of assessment or determination; notice and registration

Town ordinance prohibiting sex offenders from residing within 6,500 feet of protected location did not resemble traditional punishment of banishment, for purposes of determining whether it was punitive in nature for Ex Post Facto Clause purposes; protected locations restriction, taken alone, impacted less than 30% of town's total housing stock and left three motels available to designated offenders. U.S. Const. art. 1, § 10, cl. 1.

[11] **Constitutional Law** Sex Offenders

Mental Health Effect of assessment or determination; notice and registration

Town ordinance prohibiting sex offenders from residing within 6,500 feet of another designated offender resembled traditional punishment of banishment, for purposes of determining whether it was punitive in nature for Ex Post Facto Clause purposes; restriction created possible future in which no new offenders would be permitted to live within town at all, because any available residences would be within 6,500 feet of another designated offender or protected location. U.S. Const. art. 1, § 10, cl. 1.

1 Case that cites this headnote

[12] **Constitutional Law** Penal laws in general

If disability or restraint imposed by law is minor and indirect, its effects are unlikely to be punitive, and are likely to instead be civil, for Ex Post Facto Clause purposes. U.S. Const. art. 1, § 10, cl. 1.

[13] **Constitutional Law** Sex Offenders

Mental Health Effect of assessment or determination; notice and registration

Town ordinance prohibiting sex offenders from residing within 6,500 feet of protected location or another sex offender did not impose any affirmative disabilities or restraints significant enough to constitute "punishment" for Ex Post Facto Clause purposes; ordinance did not force offenders to leave their homes at all, impose explicit ban on new offenders moving into town, restrict where designated offenders could work, or require offenders to appear in person to register. U.S. Const. art. 1, § 10, cl. 1.

[14] **Constitutional Law** Penal laws in general

Whether law has rational connection to nonpunitive purpose is most significant factor in court's determination that statute's effects are not punitive, and are instead civil, for purposes of ex post facto analysis. U.S. Const. art. 1, § 10, cl. 1.

1 Case that cites this headnote

[15] **Constitutional Law** Penal laws in general

In determining whether law has rational connection to nonpunitive purpose, for purposes of ex post facto analysis, court's inquiry begins with identifying nonpunitive purpose and then determining whether ordinance's requirements are rationally connected to that purpose; court will not fault legislature for lacking close or perfect fit with its nonpunitive aims, so long as any imprecision in ordinance does not suggest that law's nonpunitive purpose is sham or mere pretext. U.S. Const. art. 1, § 10, cl. 1.

1 Case that cites this headnote

[16] **Constitutional Law** Penal laws in general

In determining whether law's restrictions are excessive with respect to legislature's nonpunitive purposes, court evaluating claim that law violates Ex Post Facto Clause does not ask whether legislature has made best choice possible to address the problem it seeks to remedy; rather, question is whether regulatory means chosen are reasonable in light of nonpunitive objective. U.S. Const. art. 1, § 10, cl. 1.

1 Case that cites this headnote

[17] **Constitutional Law** Sex Offenders

Mental Health Effect of assessment or determination; notice and registration

Town ordinance prohibiting sex offenders from residing within 6,500 feet of protected location was not excessive with respect to its nonpunitive purpose of protecting children, for purposes of determining whether it was punitive in nature for Ex Post Facto Clause purposes; protected locations restriction, taken alone, impacted less than 30% of available housing stock in town, leaving over 70% of the town's residential units —including its affordable long-term rental motels—available to designated offenders. U.S. Const. art. 1, § 10, cl. 1.

[18] **Mental Health** Proceedings

Summary Judgment Civil and Constitutional Rights

Genuine issue of material fact as to whether town ordinance prohibiting sex offenders from residing within 6,500 feet of another designated offender was reasonably related to town's legitimate interest in protecting its children precluded summary judgment on sex offender's claim that ordinance violated Ex Post Facto Clause. U.S. Const. art. 1, § 10, cl. 1.

[19] **Constitutional Law** ⚌ Classification and registration, restrictions and obligations

Mental Health ⚌ Effect of assessment or determination, notice and registration

Town ordinance prohibiting sex offenders from residing within 6,500 feet of protected location or another sex offender did not violate designated offender's substantive due process rights; there was no facial animus toward sex offenders in ordinance, and it was rationally related to town's interest in protecting children. U.S. Const. Amend. 14.

*392 Appeal from the United States District Court for the Eastern District of Wisconsin. No. 2:20-cv-1100 — **Lynn Adelman**, *Judge*

Attorneys and Law Firms

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Before Sykes, Chief Judge, and Rovner and Lee, Circuit Judges.

Opinion

Lee, Circuit Judge.

The Town of Paris is a small, rural community in Kenosha County, Wisconsin. In 2008, Paris enacted its "Sex Offender Residency Restrictions" ordinance, limiting where certain sex offenders—referred to as "designated offenders"—could live within the town. *See* Town of Paris, Wis. Code of Ordinances, §§ 10-19–10-25 (2022) (the "Ordinance"). As relevant here, the ordinance prohibits designated offenders from living within 6,500 feet of certain protected locations where children are known to congregate (we will call this the "protected locations restriction") It also prohibits designated offenders from living within 6,500 feet of any other designated offender (we will call this the 'designated offenders restriction") *Id.* § 10-21(1)(a)–(b)

Peter Nelson, a former Paris resident and designated offender, was cited for violating the ordinance's designated offenders *393 restriction. He filed suit under 42 U S C § 1983, arguing that the ordinance—both facially and as applied—violates his constitutional right to substantive due process under the Fourteenth Amendment, as well as Article I's prohibition on ex post facto laws. The district court granted summary judgment against Nelson and in favor of Paris on both claims *See Nelson v Town of Paris*, 616 F Supp 3d 844 (E.D Wis. 2022). Nelson appeals.

Applying the analysis espoused in *Smith v Doe*, 538 U S. 84, 123 S Ct. 1140, 155 L.Ed.2d 164 (2003), we hold that Paris's restriction prohibiting designated offenders from living within 6,500 feet of protected locations does not violate the Constitution's Ex Post Facto Clause because it is not "so punitive either in purpose or effect" as to negate Paris's nonpunitive intent for the restriction. *Id.* at 92, 123 S.Ct. 1140 (quoting *Kansas v Hendricks*, 521 U.S. 346, 361, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997)). But based on the record before us, we cannot conclude the same about Paris's restriction prohibiting designated offenders from living within 6,500 feet of each other. We therefore remand this issue to the district court for further factual development. As for Nelson's due process claim, because he concedes the ordinance is rationally related to Paris's legitimate interest in protecting children, we affirm the district court's dismissal of that claim.

I. BACKGROUND

A. The Ordinance

Paris enacted the 'Sex Offender Residency Restrictions" ordinance in 2008 and amended it in 2018 [1] It applies only to "designated offenders," defined as "any person who is required to register under Section 301.45 and 301.46, Wisconsin Statutes, for any sexual misconduct or violation as a result of being a repeat sexual offender, sexual offender who has used physical violence in committing an offense or who has preyed upon children." Ordinance § 10-20(2). The stated intent of the ordinance is not to punish designated offenders, but to "promote, protect and improve the health, safety and welfare" of Paris's citizens "by creating areas around locations where children regularly congregate in concentrated numbers" wherein designated offenders

are prohibited from establishing residency" Ordinance § 10-19(3) It is also Paris's stated intent to impose the residency restrictions to "provide protection to children by minimizing immediate access and proximity to children and thereby reducing opportunity and temptation for recidivism" *Id.* Paris determined that the restrictions would address its "compelling need to protect children where they congregate or play in public places" *Id.*

As relevant here, the ordinance imposes two discrete residency restrictions The protected locations restriction prohibits designated offenders from establishing a residence "within six thousand five hundred (6,500) feet of a Protected Location" *Id.* § 10-21(1)(a). "Protected Locations" are defined as any school property, day care center, library, park, recreational trail, playground, athletic field used by children, place of worship, swimming pool, specialized school for children (*e g*, gymnastics or dance academy), and any other place designated by Paris as a place where children ***394** congregate *Id.* § 10-20(6). Although these locations are broadly defined, Paris has specifically designated only ten Protected Locations (such as the local school, preschool, and town hall). *See* Map of Protected Locations, ECF No 31-3 The ordinance does provide a significant exception· a designated offender will not be held in violation of the ordinance if a new Protected Location opens within 6,500 feet of that person's already established and registered residence Ordinance § 10-21(6)(c)

The ordinance also establishes the designated offenders restriction This restriction prohibits designated offenders from residing "within a six thousand five hundred (6,500) foot radius of an existing [residence] of another Designated Offender" *Id.* § 10-21(1)(b)

Maps that depict the scope of the designated offenders restriction, as well as of the collective effect of the two restrictions, were produced in litigation *See* Map of Designated Offenders Locations, ECF No 31-4, Map of All 6,500-Foot Exclusion Zones, ECF No 31-5 A designated offender who violates the ordinance faces a daily fine of $500 Ordinance § 10-24

B. Peter Nelson

In June 2017, Nelson and his wife moved to the Bristol Motel, a 12-unit motel in Paris providing both nightly rentals and longer-term leases The motel is not within 6,500 feet of any of Paris's protected locations But in June 2019, to Nelson's surprise, he received a letter from the town notifying him that he was violating the ordinance because another designated offender lived within 6,500 feet of the motel Nelson had never known about, met, or spoken to this other offender, who was one of three other designated offenders living in Paris

Nelson sought an exemption through the appeals process provided by the ordinance, *id.* § 10-25, but his exemption was denied, and he later received a $500 citation from the Kenosha County Sheriff Because he and his wife were unable to find another affordable home within Paris that complied with both provisions of the ordinance, they moved out of Paris to nearby Racine, Wisconsin, where they currently reside

C. The Ordinance's Impact

In addition to the Bristol Motel, Paris has two other multi-unit motels that provide long-term rentals. the 11-unit Paris Motel, and the 21-unit Oasis Motel Of these three motels, the Bristol Motel and the Paris Motel are unavailable to designated offenders. Although neither is located within 6,500 feet of a protected location, both are within 6,500 feet of another designated offender's residence

The motels are the only multi-unit residences within Paris. The remaining housing stock in Paris is predominantly single-family homes. Indeed, approximately 75% of Paris is zoned as agricultural parcels, which, absent permission from the Wisconsin Department of Agriculture, may accommodate only one single-family house The average market value of homes in Paris is $388,000, and the average of a home on an agricultural parcel is $426,600

At the time Nelson filed his lawsuit, the combined effect of the two residency restrictions put 70 4% of Paris's total land area and 58 5% of its residential units off-limits to designated offenders But this does not paint a complete picture of the restrictions' impact As soon as a designated offender establishes a residence in one of the 41 5% of allowable residential units, a new 6,500-foot buffer zone is automatically created around that residence That means, for example, that only one of the 21 units of the Oasis Motel is available for a designated offender Once a single designated ***395** offender takes up residence in one of the motel's 21 units, the remaining 20 immediately become off-limits [2] And if and when another designated offender establishes a residence in whatever allowable residences remain, the percentage of allowable residences decreases materially

II. DISCUSSION

[1] We review the district court's order granting summary judgment to Paris *de novo*, viewing all facts and making all reasonable inferences in the light most favorable to Nelson. *Hope v. Comm'r of Ind. Dep't of Corr.*, 9 F.4th 513, 523 (7th Cir. 2021).

A. Ex Post Facto Clause

[2] The United States Constitution prohibits any state from passing ex post facto laws—those that "retroactively alter the definition of crimes or increase the punishment for criminal acts." *Collins v. Youngblood*, 497 U.S. 37, 43, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990). Thus, a law violates the Constitution if it is both retroactive and penal in nature. *Koch v. Village of Hartland*, 43 F.4th 747, 748 (7th Cir. 2022).

Both parties agree that, under our decision in *Koch*, the ordinance is retroactive because it "applies to [citizens] convicted for acts committed before the provision's effective date." 43 F.4th at 752 (quoting *Weaver v. Graham*, 450 U.S. 24, 31, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981)). Accordingly, the only question before us is whether the ordinance is punitive.

[3] In answering this question, we look to the Supreme Court's decision in *Smith*, which sets forth a two-part inquiry. First, we ask "whether the legislature intended to enact a punitive, rather than civil, law." *Hope*, 9 F.4th at 530 (citing *Smith*, 538 U.S. at 92, 123 S.Ct. 1140). If we find that "the intention of the legislature was to impose punishment, that ends the inquiry"—the law is penal. *Smith*, 538 U.S. at 92, 123 S.Ct. 1140. On the other hand, if we determine that the legislature intended the law to be a civil one, we do not stop there. We proceed to assess whether the law is "so punitive either in purpose or effect as to negate [the legislature's] intention to deem it civil." *Id.* (cleaned up).

[4] [5] This inquiry requires the consideration of five factors: whether the law (1) "has been regarded in our history and traditions as a punishment"; (2) "imposes an affirmative disability or restraint"; (3) "promotes the traditional aims of punishment"; (4) "has a rational connection to a nonpunitive purpose"; or (5) "is excessive with respect to this purpose." *Id.* at 97, 123 S.Ct. 1140 (citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963)). The factors are "neither exhaustive nor dispositive, but are useful guideposts." *Id.* (cleaned up). Moreover, the Supreme Court has "expressly disapproved" focusing on "the effect that [the law] has on a single individual." *Seling v. Young*, 531 U.S. 250, 262, 121 S.Ct. 727, 148 L.Ed.2d 734 (2001) (citing *Hudson v. United States*, 522 U.S. 93, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997)). Put another way, "an 'as-applied' analysis would prove unworkable" because "[s]uch an analysis would never conclusively resolve whether a particular scheme is punitive." *Id.* at 263, 121 S.Ct. 727. Therefore, while our analysis may be informed by the ordinance's impact on Nelson, we must consider whether the ordinance is punitive on its face.

*396 Nelson rightly concedes that Paris intended its ordinance to be a civil regulatory scheme. *See Smith*, 538 U.S. at 92, 123 S.Ct. 1140 ("Because we ordinarily defer to the legislature's stated intent, only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.") (cleaned up). Here, the stated intent of the ordinance is to protect children, and it expressly disclaims any intent to impose additional punishment on sex offenders. Ordinance § 10-19(3). Given the significant deference owed to legislatures, we take Paris at its word. We will only question it if our review of the *Smith* factors leads us to conclude, by the "clearest proof," that the ordinance is so punitive in purpose or effect as to undermine the veracity of the claim. *See Smith*, 538 U.S. at 92, 123 S.Ct. 1140.

Before embarking on that analysis, however, we note as a prefatory matter that Paris's ordinance is severable. Ordinance § 10-23. Although we cannot ignore their combined impact, the two restrictions do not necessarily rise and fall together. We now turn to the five *Smith* factors.[3]

1. Historical and Traditional Forms of Punishment

[6] [7] A civil scheme may be punitive when it resembles traditional forms of punishment: those that "h[o]ld the person up before his fellow citizens for face-to-face shaming or expel[ ] him from the community," such as "public shaming, humiliation, and banishment." *Smith*, 538 U.S. at 98, 123 S.Ct. 1140. The law need not impose burdens identical to a traditionally recognized form of punishment, so long as the burdens sufficiently resemble those typically associated with that punishment. *See Does #1-5 v. Snyder*, 834 F.3d 696, 703 (6th Cir. 2016) (law was "not identical to any traditional punishments" but met "the general definition of punishment" and had "much in common" with banishment,

public shaming, and probation) Here, Nelson argues that the ordinance resembles the traditional punishments of supervised release and banishment

a) Supervised Release

[8] The Supreme Court acknowledged in *Smith* that a comparison between sex offender restriction laws and supervised release "has some force" 538 U S at 101, 123 S Ct. 1140 Nevertheless, we have rejected such an argument twice, and we see no reason to veer from our precedents here *See Hope*, 9 F.4th at 531–32, *see also Vasquez v Foxx*, 895 F 3d 515, 521 (7th Cir 2018), *overruled on other grounds by Koch*, 43 F 4th at 756 As in those cases, Paris's restrictions control only where designated offenders may live; they do not control any other aspects of their lives, such as where they may work or congregate, or with whom they can interact *See, e g , Vasquez*, 895 F 3d at 521 Moreover, as we noted in *Hope*, a key characteristic of supervised release is the supervisor's ability to seek revocation of the release based on the original offense 9 F 4th at 531–32 By contrast, a designated offender's violation of the ordinance does not subject him to revocation, but instead to a ***397** separate $500 fine untethered to his original offense Accordingly, in keeping with our prior holdings in *Hope* and *Vasquez*, we hold that neither the protected locations restriction nor the designated offender restriction resembles the traditional punishment of supervised release

b) Banishment

[9] A civil scheme resembles the traditional punishment of banishment when it forces individuals to leave their communities or to have difficulty finding a new one *See Smith*, 538 U.S at 98, 123 S Ct. 1140, *Vasquez*, 895 F 3d at 521 In *Vasquez*, we concluded that Illinois's sex offender residency statute, which proscribed child sex offenders from knowingly residing within 500 feet of a "day care home" or "group day care home," did not amount to banishment because it "merely ke[pt] child sex offenders from living in very close proximity to places where children are likely to congregate, it d[id] not force them to leave their communities" 895 F 3d at 518, 521 We followed that same line of reasoning in *Hope*, concluding that the difference between Indiana's 1,000-foot restriction at issue there and the 500-foot restriction in *Vasquez* was "not constitutionally significant" because it did not render Indiana's statute "any more similar to banishment" *Hope*, 9 F 4th at 531

Relying on these cases, the district court determined that Paris's restrictions do not amount to banishment because "[e]ven with the restrictions in place more than 40% of the Town's housing stock [is] available," making it at most "difficult" for sex offenders to find housing in Paris *Nelson*, 616 F Supp 3d at 851 Moreover, the district court noted, Paris's ordinance is less restrictive than those at issue in *Vasquez* and *Hope* in some ways, because it provides that individuals who have established residency need not move if a new protected location opens within 6,500 feet of their residence *Id.* at 852

Nelson argues that *Vasquez* and *Hope* should not control here As he sees it, unlike in those cases, the collective effect of the two restrictions eliminates the only affordable, long-term rental units in Paris (*i e* , the three motels) This, he asserts, effectively banishes designated offenders who are likely unable to afford a single-family home within the town Nelson also contends that the ordinance amounts to banishment because it makes it impossible for more than a few designated offenders to live in Paris, given that no offender can live within 6,500 feet (*i.e* , 1.23 miles) of another offender (or a protected location) in a town that is only roughly six-by-six miles

[10] We are not persuaded that the protected locations restriction, on its own, rises to the level of banishment. We acknowledge that a buffer of 6,500 feet is six and a half times larger than the one we allowed in *Hope* But the inquiry is not limited to the mere size of the restriction, but how the restriction affects an offender's ability to live in the town Here, the protected locations restriction, taken alone, impacts less than 30% of the total housing stock of Paris and leaves the three motels available to designated offenders Although the radius of the residency restriction may border on being excessive and is much larger than any we have addressed, it does not have the effect of banishing designated offenders from the town This is particularly so given the exception in the ordinance that allows designated offenders to remain in their residences if a new protected location opens nearby

[11] The designated offenders restriction, on the other hand, looks much more akin to banishment On its face, this restriction—whether taken alone or in combination with the protected locations restriction—creates ***398** a possible future in which no new offenders will be permitted to live

within Paris at all, because any available residences will be within 6,500 feet of another designated offender (or a protected location). It is true that the restriction will not oust designated offenders from their current homes in Paris, but as the Supreme Court explained, banishment traditionally means that a person "could neither return to their original community nor ... *be admitted easily into a new one.*" *Smith*, 538 U.S. at 98, 123 S.Ct. 1140 (emphasis added) (citation omitted); *accord Hope*, 9 F.4th at 531; *Vasquez*, 895 F.3d at 521. The designated offenders restriction creates a ceiling on the number of designated offenders that may be able to reside in Paris and, therefore, has a direct impact on the ability of designated offenders to move into Paris. As for this restriction, the first factor favors Nelson.

2. Affirmative Disabilities or Restraints

[12] Next, we consider whether the restrictions subject designated offenders to an "affirmative disability or restraint." This factor focuses on how the effects of the law are felt by those subjected to it. *Smith*, 538 U.S. at 99–100, 123 S.Ct. 1140. "If the disability or restraint is minor and indirect, its effects are unlikely to be punitive." *Id.* at 100, 123 S.Ct. 1140. The paradigmatic example of an affirmative disability or restraint is imprisonment—a physical restraint. *Id.*

In the context of residency restrictions, some courts have found that the inability or substantial difficulty in selecting or changing residences due to the restriction may be considered a direct and substantial restraint. *See Doe v. Miami-Dade County*, 846 F.3d 1180, 1185 (11th Cir. 2017); *see also Snyder*, 834 F.3d at 703 (restrictions on where offenders may live, work, and loiter, as well as requiring in-person registration, "are direct restraints on personal conduct"); *Hoffman*, 249 F. Supp. 3d at 958 (restrictions limiting designated offenders to ten percent of Village's land area, most of which was non-residential, were "severe restraints"). Recognizing that "[t]he boundaries of this factor are undefined," however, we have declared that "very few burdens are significant enough to tip the scale" of this factor in favor of the challenger. *Hope*, 9 F.4th at 532.

[13] Neither of the restrictions at issue impose any burdens significant enough to "tip the scale" in favor of Nelson. The only restraint imposed by the restrictions—whether taken together or in isolation—relates to where a designated offender may live. The ordinance does not, for example, force offenders to leave their homes if a new protected location opens within 6,500 feet of their established residence. *See Vasquez*, 895 F.3d at 518, 522 (finding no affirmative disability or restraint where plaintiffs were forced to move after a new child day care opened within 500 feet of their homes). Indeed, it does not force offenders to leave their homes at all, let alone impose an explicit ban on new offenders moving into Paris. *See Hoffman*, 249 F. Supp. 3d at 958 (permanently banning offenders who were neither residents of the town at the time of their most recent offense nor at the time the ordinance was passed). Nor does it restrict where designated offenders can work or require offenders to appear in person to register. *See Snyder*, 834 F.3d at 703. And it does not otherwise "restrain activities sex offenders may pursue but leaves them free to change jobs or residences." *Smith*, 538 U.S. at 100, 123 S.Ct. 1140. This factor favors Paris.

3. Promoting Traditional Aims of Punishment

The next factor does not sway us one way or the other. As we—and many other ***399** courts—have noted, determining whether sex offender residency restrictions promote the traditional aims of punishment provides little value to the over-all *Smith* inquiry. This is because all such regulations inevitably overlap with the traditional aims of punishment, such as deterrence, retribution, or incapacitation. *See Smith*, 538 U.S. at 102, 123 S.Ct. 1140 ("Any number of governmental programs might deter crime without imposing punishment."); *Hope*, 9 F.4th at 533 (noting we have been "unpersuaded that ... residency restrictions ... further[ ] traditional punitive aims" because they have the "obvious aim" of protecting children); *Snyder*, 834 F.3d at 704 (the law's "very goal is incapacitation insofar as it seeks to keep sex offenders away from opportunities to reoffend"); *Hoffman*, 249 F. Supp. 3d at 958 (this factor "is of limited importance because punishment goals often overlap with legitimate civil regulatory goals"). Accordingly, this factor typically favors the municipality where such "punitive aims" flow naturally from the civil scheme's nonpunitive goals.

That is precisely the case here. Paris's ordinance pursues its legitimate interests in protecting children through residency restrictions that seek to deter recidivism. This factor favors Paris as to both restrictions, although we afford it little weight for the reasons noted.

4. Rational Connection to Nonpunitive Purpose

[14] [15] "Whether the law has a 'rational connection to a nonpunitive purpose' is 'a most significant factor in our determination that the statute's effects' are not punitive." *Hope*, 9 F.4th at 533 (quoting *Smith*, 538 U.S. at 102, 123 S.Ct. 1140). Our inquiry begins with identifying a nonpunitive purpose and then determining whether the ordinance's requirements are rationally connected to that purpose. *Id.* We will not fault the legislature for lacking a "close or perfect fit" with its nonpunitive aims, so long as any imprecision in the ordinance "does not suggest that the Act's nonpunitive purpose is a 'sham or mere pretext.' " *Smith*, 538 U.S. at 103, 123 S.Ct. 1140 (quoting *Kansas*, 521 U.S. at 371, 117 S.Ct. 2072 (Kennedy, J., concurring)).

The goal of Paris's ordinance is to protect children from harm. Specifically, its stated intent is to "promote, protect and improve the health, safety and welfare of the citizens of the Town by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sex offenders and sex predators are prohibited from establishing residency." Ordinance § 10-19(3). It also seeks "to provide protection to children in the Town by minimizing immediate access and proximity to children and thereby reducing opportunity and temptation for recidivism," and to "protect children where they congregate or play in public places." *Id.*

Protecting children is a legitimate nonpunitive purpose, and Nelson concedes for the purposes of appeal that the restrictions at issue have a rational connection to that purpose. Given that Nelson provides no basis for us to question the stated rationale of the ordinance, we find this factor to favor Paris as to both restrictions.

5. Excessive With Respect to Nonpunitive Purpose

[16] Instead of challenging the ordinance's rational connection to its purpose of protecting children, Nelson places his stock in the final factor, arguing that the restrictions are excessive with respect to that purpose. At this step, which is related to the fourth factor, *see Vasquez*, 895 F.3d at 522, we do not ask "whether the legislature ***400** has made the best choice possible to address the problem it seeks to remedy." *Smith*, 538 U.S. at 105, 123 S.Ct. 1140. Rather, "[t]he question is whether the regulatory means chosen are *reasonable* in light of the nonpunitive objective." *Id.* (emphasis added).

We begin with the protected locations restriction. Nelson acknowledges that courts have regularly upheld these types of restrictions for various distances. *E.g.*, *Vasquez*, 895 F.3d at 522 (upholding a 500-foot restriction); *Hope*, 9 F.4th at 534 (upholding a 1,000-foot restriction); *Doe v. Miller*, 405 F.3d 700, 722–23 (8th Cir. 2005) (upholding a 2,000-foot restriction). But Nelson argues that there is no precedent for upholding a 6,500-foot restriction and that the town has failed to show that such a large radius is necessary or that it would be effective in promoting its aims. In response, Paris correctly notes that it need not provide empirical evidence of efficacy to support its legislative decisions. *See F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993) ("[A] legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data."). Instead, Paris gives three reasons to justify the scope of its protected locations restriction: the rural nature of the town, the frequent travel of children within the town without adult supervision, and the lack of police presence in the town.

[17] We see no need to parse Paris's rationales with a fine-toothed comb. Rather, we are persuaded by the fact that Paris's 6,500-foot protected locations restriction, taken alone, impacts less than 30% of the available housing stock in Paris. That leaves over 70% of the town's residential units —including its affordable long-term rental motels—available to designated offenders. While Nelson is correct that (as far as we can tell) no court has ever upheld, let alone had an opportunity to evaluate, a 6,500-foot residency restriction, he has failed to show by the "clearest proof" that such a buffer around the ten protected locations in Paris is constitutionally excessive. Indeed, we suspect that if this were the only restriction at issue, we would not be here today. Thus, we find the excessiveness factor to favor Paris as to this restriction.

The designated offenders restriction, however, is a different story. Unlike the protected locations restriction, there is no precedent for this type of residency restriction, and the record offers no explanation why prohibiting designated offenders from residing within 6,500 feet of one another would safeguard Paris's children, particularly given the safeguards already in place by the protected locations restriction.

In enacting the ordinance, Paris did determine that sex offenders were "extremely likely" to recidivate in "locations close to their residences." Ordinance § 10-19(2). We defer to these legislative findings. *See Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014); *see also United States v. Kebodeaux*, 570

U S 387, 395–96, 133 S.Ct. 2496, 186 L.Ed 2d 540 (2013); *Turner Broad. Sys., Inc v FCC*, 520 U S 180, 195, 117 S.Ct. 1174, 137 L.Ed.2d 369 (1997) But, even if these findings were true and even if, as Paris suggests, residential proximity might allow greater interaction between designated offenders which, in turn, might lead to greater recidivism (a debated proposition), it is entirely unclear from this record what this restriction adds to the security the protected locations restriction already provides to the town's children. *See Turner Broad. Sys., Inc v. FCC*, 512 U.S 622, 664, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994) ("That the Government's asserted interests are *401 important in the abstract does not mean, however, that the [regulation at issue] will in fact advance those interests.").[4]

Accordingly, after drawing all reasonable factual inferences in Nelson's favor, we conclude that disputed facts exist as to whether the designated offenders restriction is reasonably related to Paris's legitimate interest in protecting its children.

[18] In summary, we conclude that Nelson has failed to establish by the "clearest proof" that Paris's protected locations restriction violates the Constitution's prohibition on ex post facto laws. Nelson has established, however, that the designated offenders restriction resembles the traditional form of banishment because it effectively establishes a ceiling beyond which no designated offender could ever reside in Paris. And the factual record, as it currently stands, leaves genuine disputes of fact as to the reasonableness of this restriction when considered against Paris's stated goal of protecting its children. We therefore remand this case to the district court for an evidentiary hearing and further consideration of the designated offenders restriction. *See Turner Broad.*, 512 U.S. at 668, 114 S.Ct. 2445 (remanding for factual development where the "paucity of evidence" precluded determination as to the constitutionality of the challenged statute).

B. Substantive Due Process

The remaining issue is easily dispatched Nelson argues that the ordinance violates his substantive right to due process protected by the Fourteenth Amendment. He acknowledges that his claim is subject to rational basis review because he does not allege that the ordinance infringes on any fundamental right. Nevertheless, he urges us to apply some level of heightened scrutiny, arguing that sex offenders are a despised minority.

[19] We rejected this exact argument in *Vasquez* 895 F.3d at 524–25. There, when asked to apply heightened scrutiny to the residency restrictions at issue, we declined to do so, explaining that because "[t]he residency statute [wa]s facially neutral and advance[d] a compelling government interest: protecting children from recidivism by child sex offenders," heightened scrutiny did not apply. *Id.* at 525. We find the same to be true here. There is no facial animus toward sex offenders in the ordinance, the purpose of which is to protect children. Therefore, only rational-basis review is appropriate. And given that Nelson concedes that the ordinance is rationally related to Paris's interest in protecting children, his due process claim necessarily fails.

III. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's grant of summary judgment in favor of Paris on Nelson's Fourteenth Amendment claim and his Ex Post Facto Clause claim to the extent it applies to the protected locations restriction, Ordinance § 10-21(1)(a). But we hold that the district court erred in granting summary judgment in favor of Paris on Nelson's Ex Post Facto Clause claim as it applies to the designated offenders restriction, Ordinance § 10-21(1)(b). We therefore VACATE in part and REMAND to the district *402 court for proceedings consistent with this opinion.

All Citations

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Footnotes

1 The 2018 amendments are not relevant to this appeal Those amendments, made in response to *Hoffman v Village of Pleasant Prairie*, 249 F Supp 3d 951 (E D Wis 2017), included "provid[ing] due process for an appeals process by appointing an appeal board consisting of three Paris residents and one alternate " At that time, Paris also created a "Protected Locations map "

2 By our calculation, in this example, the combined effect of the Ordinance's residency restrictions puts at least 61 8% (not 58 5%) of Paris's residential units off-limits to designated offenders—leaving at most 32 8% of the available housing stock for these individuals

3 Paris argues repeatedly that it did not "intend" to punish designated offenders But the entire purpose of the *Smith* analysis is to look beyond the legislature's intent—which Nelson concedes for appeal was not penal—and to evaluate whether the law is so punitive *in effect* such that it negates any such non-punitive intent *Smith*, 538 U S at 92–93, 123 S Ct. 1140, *see also Hudson*, 522 U S at 104, 118 S Ct. 488 ("The fact that petitioners' 'good faith' was considered in determining the amount of the penalty to be imposed in this case is irrelevant, as we look only to the 'statute on its face' to determine whether a penalty is criminal in nature ") (quoting *Kennedy*, 372 U S at 169, 83 S Ct. 554)

Paris's Town Board Chairperson, John Holloway, did testify after the fact that Paris's reason for the designated offenders restriction was to minimize the interaction and proximity of offenders in order to avoid any "encouragement of continued antisocial behavior " But Paris admits there is no evidence or reason to believe that forcing offenders to live certain distances apart has any reasonable relation to recidivism rates

U.S. Department of Justice
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Bureau of Justice Statistics

Recidivism of Sex Offenders Released from Prison in 1994

Offender characteristics

Sentences and criminal records

Comparisons to other offenders

Rearrests and reconvictions

Rearrests for sex crimes against children

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Recidivism of Sex Offenders Released from Prison in 1994

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Contents

Introduction

In 1994, prisons in 15 States released 9,691 male sex offenders. The 9,691 men are two-thirds of all the male sex offenders released from State prisons in the United States in 1994. This report summarizes findings from a survey that tracked the 9,691 for 3 full years after their release. The report documents their "recidivism," as measured by rates of rearrest, reconviction, and reimprisonment during the 3-year followup period.

This report gives recidivism rates for the 9,691 combined total. It also separates the 9,691 into four overlapping categories and gives recidivism rates for each category:

- 3,115 released rapists
- 6,576 released sexual assaulters
- 4,295 released child molesters
- 443 released statutory rapists.

The 9,691 sex offenders were released from State prisons in these 15 States: Arizona, Maryland, North Carolina, California, Michigan, Ohio, Delaware, Minnesota, Oregon, Florida, New Jersey, Texas, Illinois, New York, and Virginia.

Highlights

The 15 States in the study released 272,111 prisoners altogether in 1994. Among the 272,111 were 9,691 men whose crime was a sex offense (3.6% of releases).

On average the 9,691 sex offenders served 3½ years of their 8-year sentence (45% of the prison sentence) before being released in 1994.

Rearrest for a new sex crime

Compared to non-sex offenders released from State prisons, released sex offenders were 4 times more likely to be rearrested for a sex crime. Within the first 3 years following their release from prison in 1994, 5.3% (517 of the 9,691) of released sex offenders were rearrested for a sex crime. The rate for the 262,420 released non-sex offenders was lower, 1.3% (3,328 of 262,420).

The first 12 months following their release from a State prison was the period when 40% of sex crimes were allegedly committed by the released sex offenders.

Recidivism studies typically find that, the older the prisoner when released, the lower the rate of recidivism. Results reported here on released sex offenders did not follow the familiar pattern. While the lowest rate of rearrest for a sex crime (3.3%) did belong to the oldest sex offenders (those age 45 or older), other comparisons between older and younger prisoners did not consistently show older prisoners' having the lower rearrest rate.

The study compared recidivism rates among prisoners who served different lengths of time before being released from prison in 1994. No clear association was found between how long they were in prison and their recidivism rate.

Before being released from prison in 1994, most of the sex offenders had been arrested several times for different types of crimes. The more prior arrests they had, the greater their likelihood of being rearrested for another sex crime after leaving prison. Released sex offenders with 1 prior arrest (the arrest for the sex crime for which they were imprisoned) had the lowest rearrest rate for a sex crime, about 3%; those with 2 or 3 prior arrests for some type of crime, 4%; 4 to 6 prior arrests, 6%; 7 to 10 prior arrests, 7%; and 11 to 15 prior arrests, 8%.

Rearrest for a sex crime against a child

The 9,691 released sex offenders included 4,295 men who were in prison for child molesting.

Of the children these 4,295 men were imprisoned for molesting, 60% were age 13 or younger.

Half of the 4,295 child molesters were 20 or more years older than the child they were imprisoned for molesting.

On average, the 4,295 child molesters were released after serving about 3 years of their 7-year sentence (43% of the prison sentence).

Compared to the 9,691 sex offenders and to the 262,420 non-sex offenders, released child molesters were more likely to be rearrested for child molesting. Within the first 3 years following release from prison in 1994, 3.3% (141 of 4,295) of released child molesters were rearrested for another sex crime against a child. The rate for all 9,691 sex offenders (a category that includes the 4,295 child molesters) was 2.2% (209 of 9,691). The rate for all 262,420 non-sex offenders was less than half of 1% (1,042 of the 262,420).

Of the approximately 141 children allegedly molested by the child molesters after their release from prison in 1994, 79% were age 13 or younger.

Released child molesters with more than 1 prior arrest for child molesting were more likely to be rearrested for child molesting (7 3%) than released child molesters with no more than 1 such prior arrest (2 4%)

Rearrest for any type of crime

Compared to non-sex offenders released from State prison, sex offenders had a lower overall rearrest rate When rearrests for any type of crime (not just sex crimes) were counted, the study found that 43% (4,163 of 9,691) of the 9,691 released sex offenders were rearrested The overall rearrest rate for the 262,420 released non-sex offenders was higher, 68% (179,391 of 262,420)

The rearrest offense was a felony for about 75% of the 4,163 rearrested sex offenders. By comparison, 84% of the 179,391 rearrested non-sex offenders were charged by police with a felony

Reconviction for a new sex crime

Of the 9,691 released sex offenders, 3.5% (339 of the 9,691) were reconvicted for a sex crime within the 3-year followup period

Reconviction for any type of crime

Of the 9,691 released sex offenders, 24% (2,326 of the 9,691) were reconvicted for a new offense The reconviction offense included all types of crimes

Returned to prison for any reason

Within 3 years following their release, 38.6% (3,741) of the 9,691 released sex offenders were returned to prison They were returned either because they received another prison sentence for a new crime, or because of a technical violation of their parole, such as failing a drug test, missing an appointment with their parole officer, or being arrested for another crime

Imprisonment offense The 9,691 prisoners were men released from State prisons in 1994 after serving some portion of the sentence they received for committing a sex crime. The sex crime they committed is referred to throughout the report as their "imprisonment offense." Their imprisonment offense should not be confused with any new offense they may have committed after release.

Sex offender The 9,691 released men were all violent sex offenders. They are called "violent" because the crimes they were imprisoned for are widely defined in State statutes as "violent" sex offenses. "Violent" means the offender used or threatened force in the commission of the crime or, while not actually using force, the offender did not have the victim's "factual" or "legal" consent. Factual consent means that, for physical reasons, the victim did not give consent, such as when the offender had intercourse with a sedated hospital patient or with a woman who had fallen unconscious from excessive drug taking. "Legal" consent means that the victim willingly participated but, in the eyes of the law, the victim was not old enough or not sufficiently mentally capable (perhaps due to mental illness or mental retardation) to give his or her "legal" consent.

State statutes give many different names to violent sex offenses: "forcible rape," "statutory rape," "object rape," "sexual assault," "sexual abuse," "forcible sodomy," "sexual misconduct," "criminal sexual conduct," "lascivious conduct," "carnal abuse," "sexual contact," "unlawful sexual intercourse," "sexual battery," "unlawful sexual activity," "lewd act with minor," "indecent liberties with a child," "carnal knowledge of a child," "incest with a minor," and "child molesting."

"Violent" sex offenses are distinguished from "nonviolent" sex offenses and from "commercialized sex offenses." Nonviolent sex offenses include morals and decency offenses (for example, indecent exposure and peeping tom), bestiality and other unnatural acts, adultery, incest between adults, and bigamy. Commercialized sexual offenses include prostitution, pimping, and pornography. As used throughout this report, the terms "sex crimes" and "sex offenders" refer exclusively to violent sex offenses.

Each of the 9,691 sex offenders in this report is classified as either a rapist or a sexual assaulter. Classification was based on information about the imprisonment offense contained in prison records supplied for each sex offender released from prison in 1994. Also based on imprisonment offense information, an inmate could be categorized as a child molester and/or a statutory rapist. Classification to either of these two categories is in addition to, not separate from, classification as a rapist or sexual assaulter. For example, of the 3,115 sex offenders classified as rapists, 338 were child molesters. Or, to put it another way, the imprisonment offense for 338 of the 4,295 child molesters identified in this report was rape. Similarly, 3,957 of the 4,295 child molesters were also sexual assaulters.

	Total	Rapists	Sexual assaulters
Child molesters	4,295	338	3,957
Statutory rapists	443	21	422

The report gives statistics for all sex offenders and each of the four types — rapists, sexual assaulters, child molesters, and statutory rapists. (See *Methodology* on page 37 for details on how sex offenders were separated into categories.)

Rapist "Violent sex crimes" are separated into two categories: "rape" (short for "forcible rape") and "other sexual assault." As used throughout this report the term "rapist" refers to a released sex offender whose imprisonment offense was defined by State law as forcible intercourse (vaginal, anal, or oral) with a female or male. Rape includes "forcible sodomy" and "penetration with a foreign object." Rape excludes statutory rape or any other nonforcible sexual act with a minor or with someone unable to give legal or factual consent. As used throughout this report, "rape" always means "forcible rape." "Statutory rape" is not a type of forcible rape.

A total of 3,115 sex offenders are identified in the report as released rapists — about a third (32%) of the 9,691 released sex offenders. However, enough information to clearly distinguish rapists from other sexual assaulters was not always available in the prison records used to categorize sex offenders into different types. Consequently, the number of rapists among the 9,691 was almost certainly greater than 3,115; how much greater is unknown.

An obstacle to identifying rapists from penal code information is that the label "rape" is not used in about half the 50 States. However, released sex offenders whose imprisonment offense was rape could still be identified. To illustrate, in one State, the term criminal sexual conduct refers to all types of sex crimes. The statutory language was consulted to determine if an offender's imprisonment offense involved "intercourse" that was "forcible," in accordance with the definition of rape used in this report. If the offense was not found to involve intercourse (or penetration), then the inmate was not classified as a rapist. The same was true of force; if the statutory language did not include a reference to force (or coercion), the offense was not categorized as rape.

Sexual assaulter By definition in the report, all sex offenders are either "rapists" or "sexual assaulters." Sex offenders whose imprisonment offense could not be positively identified as "rape" were placed in the "sexual assault" category. To the extent that rapists were reliably distinguished from sexual assaulters, "sexual assaulters" identified in this report were released sex offenders whose imprisonment

offense was "sexual assault," defined as one of the following
1 forcible sexual acts, not amounting to intercourse, with a victim of any age,
2 nonforcible sexual acts with a minor (such as statutory rape or incest with a minor or fondling), or
3 nonforcible sexual acts with someone unable to give legal or factual consent because of mental or physical reasons (for example, a mentally ill or retarded person or a sedated hospital patient)

A total of 6,576 sex offenders are identified in this report as released sexual assaulters The 6,576 sexual assaulters made up about two-thirds (68%) of the 9,691 released sex offenders

Child molester Many of the 9,691 sex offenders were released prisoners whose imprisonment offense was the rape or sexual assault of a child Throughout the report, released sex offenders whose forcible or nonforcible sex crime was against a child are referred to as "child molesters." The sex crime did not have to involve intercourse to fit the definition of child molestation

Of the 9,691 sex offenders, 4,295 were identified as child molesters based on prison records made available for the study However, because complete information was not always supplied, not every child molester could be identified Of the 9,691 released sex offenders, undoubtedly more than 4,295 were child molesters, but 4,295 represent all who could be identified from the information available One reason child molesters were not easily identified from penal code information is that most States do not use the term "child molester" in their penal code Nevertheless, all States have laws against sexual activity with children, which does facilitate identification As a result of the uncertainty regarding the number of child molesters among the 9,691 sex offenders, the study cannot say what percentage of the victims of the 9,691 sex offenders' offenses were children, and what percentage were adults

In short, the 4,295 released child molesters in this report were men who —
a had forcible intercourse with a child or
b committed "statutory rape" (meaning nonforcible intercourse with a child) or
c with or without force, engaged in any other type of sexual contact with a child
Of the 4,295, at least 338 (about 8%) had forcible intercourse, and at least 443 (10%) committed statutory rape

Statutory rapist State laws define various circumstances in which intercourse between consenting partners is illegal for example, when one of the partners is married or when the two are blood relatives or when one is a "child." Laws that criminalize consensual intercourse based solely on the marital status of the partners are called "adultery laws." Those that criminalize it based solely on blood relationship are "incest laws." Laws that prohibit consensual sexual intercourse based solely on the ages of the partners are called "statutory rape laws."

Statutory rape pertains exclusively to consensual intercourse, as opposed to other types of sexual contact with a child, such as forcible intercourse, forcible fondling, or consensual fondling Statutory rape is one specific form of what this study calls "child molestation." The child victim of statutory rape can be male or female, and the offender can be male or female The offender can be almost any relative ("statutory rape" includes incest with a child), an unrelated person well known to the child (such as a school teacher, neighbor, or minister), someone the child hardly knows, or a stranger

Statutory rape laws define a "child" as a person who is below the "age of consent," meaning below the minimum age at which a person can legally consent to having intercourse Age of consent in the 50 States ranges from 14 to 18 Most States set age of consent at 16 In those States, consensual intercourse with someone age 16 or older is usually not a criminal offense, but intercourse with someone below 16 generally is However, all States make exceptions to their age rules Consequently, consensual intercourse with children below the age of consent is not always a crime, and consensual intercourse with children who are old enough to give consent is not always legally permissible

Exceptions for children below age of consent Certain statutory exceptions exist to legal prohibitions against nonforcible intercourse with children who are below the age of consent One way exceptions are made in statutes is by specifying the minimum age the offender must be (for example, at least age 18, at least age 20) for intercourse to be unlawful Persons below this minimum age generally cannot be prosecuted Another common way exceptions are made (virtually every State has these provisions in its laws) is by specifying how much older than the victim the perpetrator must be for criminal prosecution to occur For example, by law in one State where age of consent is 16, no prosecution can occur unless the age difference is at least 3 years In that State it is legal for a 17-year-old to have consensual intercourse with a 15-year-old, even though 15 is below the age of consent, but the same act with a 15-year-old is illegal when the other is 18 That is because the 17-year-old is not 3 years older than the 15-year-old, whereas the 18-year-old is The aim of such exceptions is to distinguish teen behavior from exploitative relationships between adults and children Another exception is consensual intercourse between husband and wife, no prosecution can occur if one spouse is below the age of consent

Exceptions for children old enough to give consent Certain adults can be prosecuted for having consensual intercourse with a child who has reached the age of consent. For example, in one State it is a third degree felony for a psychotherapist to have intercourse with a 17-year-old client even though 17 is over the minimum age of consent in that State. In another State, where an adult generally cannot be prosecuted for having consensual intercourse with a 16-year-old, an exception is made when the adult is the child's school teacher. In that case the teacher can be prosecuted for a "class A" misdemeanor. Exceptions are made for other professions as well (clergy, for example).

In this report, 443 of the 9,691 released sex offenders are identified as statutory rapists based on information supplied by the prisons that released them. There were more than 443 statutory rapists among the 9,691 released male sex offenders, but the 443 are all that could be positively identified with the limited information available. One reason statutory rapists are not easily identified from penal code information available on the released sex offenders is that most States do not use the term "statutory rape" in their laws.

First release Though all 9,691 sex offenders in the study were released in 1994, for a fourth of the offenders 1994 was not the first year of release since receiving their prison sentence. This group had previously served a portion of the sentence and were released, then violated parole and were returned to prison to continue serving time still left on that sentence. For the remaining 75% of sex offenders released, the 1994 release was their "first release," meaning their first discharge from prison since being convicted and sentenced to prison.

"First release" should not be confused with first ever release from a prison. "First release" pertains solely to the sentence for the imprisonment offense (as defined above). It does not pertain to any earlier prison sentences offenders may have served for some other offense.

Attention is drawn to first releases because certain statistics in the report — for example, "average time served," "percent of sentence served," "child molester's age when he committed the sex crime for which he was imprisoned" — could only be computed for those prisoners classified as first releases. For such statistics, date first admitted to prison for their imprisonment offense was needed. Since prison records made available for the study only provided this admission date on first releases, first releases necessarily formed the basis for the statistics.

Prior arrest Statistics on prior arrests were calculated using arrest dates from the official criminal records of the 9,691 released sex offenders. Only dates of arrest were counted, not the number of arrest charges associated with that arrest date. To illustrate, one man was arrested on March 5, 1970, and that one arrest resulted in 3 separate arrest charges being filed against him. In this study, that March 5 arrest is considered one prior arrest.

Prior arrests were measured two different ways in this report. The first way did not include the imprisonment offense for which the sex offender was in prison in 1994. Prior arrest statistics that did not include the imprisonment offense are found in sections of the report that describe the criminal records of the 9,691 sex offenders at the time of release from prison. In this case, any arrest that had occurred on a date prior to the sex offender's arrest for his imprisonment offense was considered a prior arrest. For example, one released sex offender was found to have four different dates of arrest prior to the date of arrest for his imprisonment offense. Those four arrests resulted in 17 different charges being brought against him. When describing this released prisoner's criminal record, he is considered to have four prior arrests.

The second way of measuring prior arrests did include the imprisonment offense of the released sex offender. Prior arrest statistics that did include the imprisonment offense are found in sections of the report that describe the recidivism rates of the 9,691 sex offenders following their release from prison. In this case, any arrest that had occurred on a date prior to the sex offender's release from prison was considered a prior arrest. By definition, all 9,691 sex offenders had at least one arrest prior to their release, which was the sex crime arrest responsible for their being in prison in 1994. This means that the sex offender who was arrested on four different dates prior to the arrest for his imprisonment offense under the first definition of prior arrest was, under this second definition, classified as having five prior arrests, once his imprisonment offense is included.

Thirteen tables in the report provide statistics on prior arrests (and, in 2 of the 13, prior convictions and prior imprisonments). In tables 15, 16, 17, 18, 27, 28, 29, 30, 31, 36, and 37, "prior arrests" includes the sex crime arrest for the imprisonment offense; these tables have the heading "prior to 1994 release." In tables 5 and 6, "prior arrests" excludes that arrest; these tables have the heading "prior to the sex crime for which imprisoned."

In all tables, the same counting rule was used: arrest dates, not arrest charges, were counted to obtain the number of prior arrests.

Rearrest Unless stated otherwise, this recidivism measure is defined as the number or percentage of released prisoners who, within the first three years following their 1994 release, were arrested either in the same State that released them (in this report those arrests are called "in-State" arrests) or in a different State (those arrests are

referred to as "out-of-State" arrests). Data on arrests came from State RAP sheets and FBI RAP sheets. RAP sheets (Records of Arrest and Prosecution) are law enforcement records intended to document a person's entire adult criminal history, including every arrest, prosecution and adjudication for a felony or serious misdemeanor offense. Arrests, prosecutions and adjudications for minor traffic offenses, public drunkenness, and other petty crimes are not as fully recorded as those for serious crimes. The "percent rearrested" is calculated by dividing the number rearrested by the number released from prison in 1994.

All measures of recidivism based on criminal records are subject to two types of errors. Type 1 errors arise when the arrest or the conviction in the released prisoner's record is for a crime that person did not commit. Type 2 errors arise when the released prisoner commits a crime but he is not arrested for it, or, even if he is, the arrest does not result in his conviction.

Some amount of type 1 and type 2 error is inevitable, however recidivism is measured. But that does not mean that all recidivism measures are equally suitable, no matter the purpose they are intended to serve. The main purpose of this recidivism study was to document the percentage of sex offenders who continued their involvement in various types of crime after their release from prison in 1994. The more suitable measure for that is the one with the fewest type 2 errors: the one, in other words, less prone to saying someone is not committing crimes when he actually is. Between rearrest and reconviction as the recidivism measure, the one less likely to make that type of error is rearrest. One reason is that the rigorous standard used to convict someone — "proof beyond a reasonable doubt" — makes it certain that guilty persons will sometimes go free. Another reason is record keeping: the justice system does better at recording arrests than convictions in RAP sheets. For such reasons, this study uses rearrest more often than reconviction as the measure of recidivism.

Rearrest forms a conservative measure of reoffending because many crimes do not result in arrest. Not all types of crime are alike in this regard. Crimes committed in nonpublic places (such as in the victim's home) by one family member against another (such as by the husband against his wife, or by the father against his own child) are a type that is less likely than many other types to be reported to police and, consequently, less likely to result in arrest. Sex crimes, particularly those against children, are a specific example of this type. While some sex offenders in this study probably committed a new sex crime after their release and were not arrested or convicted, the study cannot say how many.

As mentioned above, one reason why sex offenders are not arrested is that no one calls the police. Results from the National Crime Victimization Survey indicate that the offenses of rape/sexual assault are the least likely crimes to be reported to the police. (See *Reporting Crime to the Police, 1993-2000*, March 2003, <http://www.ojp.usdoj/bjs/abstract/rcp00.htm>.)

Reconviction Except where stated otherwise, this recidivism measure pertains to State and Federal convictions in any State (not just convictions in the State that released them) in the three years following release. Information on convictions came from State and FBI RAP sheets. RAP sheets are intended to document every conviction for a felony or serious misdemeanor, but not every conviction for a minor offense. "Percent reconvicted" is calculated by dividing the number reconvicted by the number released from prison in 1994. (It is not calculated by dividing the number reconvicted by the number rearrested.)

Return to prison Two recidivism measures are returned to prison —
- with a new sentence
- with or without a new sentence.

Recidivism defined as *Returned to prison with a new sentence* pertains exclusively to sex offenders who, within 3 years following release, were reconvicted for any new crime in any State following their release and received a new prison sentence for the new crime.

Recidivism defined as *Returned to prison with or without a new sentence* includes resentenced offenders plus any who were returned to prison within 3 years because they had violated a technical condition of their release. Technical violations include things such as failing a drug test, missing an appointment with their parole officer, or being arrested for a new crime. Offenders returning to prison for such violations are sometimes referred to as "technical violators."

Prisons should not be confused with jails. A prison is a State or Federal correctional facility reserved for convicted persons with relatively long sentences (generally over a year). A jail is a local correctional facility for convicted persons with short sentences or for persons awaiting trial. Returns to prison refer to any prison, not necessarily the same prison that released the offender in 1994.

The "percent returned to prison with a new sentence" is calculated by dividing the number returned to prison with a new sentence by the number released from prison in 1994. The "percent returned to prison with or without a new sentence " is calculated by dividing the number returned to prison with or without a new sentence by the number released from prison in 1994.

Data on returns with a new sentence are based on State and FBI RAP sheets. Data on returns with or without a new sentence are based on State and FBI RAP sheets plus prison records.

All sex offenders

Of the 9,691 released sex offenders, approximately —

- 6,503 (67 1% of the 9,691) were white males (table 1)
- 3,053 (31 5%) were black males
- 136 (1 4%) were males of other races (Asian, Pacific Islander, American Indian, and Alaska Native)

The vast majority of sex offenders were non-Hispanic males (80 1%) Half were over the age of 35 when released

Rapists and sexual assaulters

As defined in this report, all sex offenders are either "rapists" or "sexual assaulters " Of the 9,691 released sex offenders, 3,115 were rapists and the remaining 6,576 were sexual assaulters

Of the 3,115 rapists, 1,735 (55 7% of 3,115) were white males and 1,327 (42 6%) were black males Of the 6,576 sexual assaulters, 4,768 (72 5% of 6,576) were white males and 1,723 (26 2%) were black males

Rapists and sexual assaulters were close in age at time of release over 70% were age 30 or older Median age at time of release was about 35 years for both rapists and sexual assaulters

Table 1. Demographic characteristics of sex offenders released from prison in 1994, by type of sex offender

Prisoner characteristic	Percent of released prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Race			
White	67 1%	55 7%	72 5%
Black	31 5	42 6	26 2
Other	1 4	1 7	1 3
Hispanic origin			
Hispanic	19 9%	22 6%	18 9%
Non-Hispanic	80 1	77 4	81 1
Age at release			
18-24*	12 2%	10 6%	13 0%
25-29	16 4	17 3	16 0
30-34	20 0	22 4	18 8
35-39	19 1	20 9	18 3
40-44	13 3	13 3	13 3
45 or older	19 0	15 5	20 6
Age at release			
Average	36 8 yrs	36 1 yrs	37 1 yrs
Median	35 3	34 9	35 5
Total released	9,691	3,115	6,576

Note The 9,691 sex offenders were released in 15 States Data identifying race were reported for 98 5% of 9,691 released sex offenders, Hispanic origin for 82 5%, age for virtually 100%
*Age at release 18-24 includes the few who were under age 18 when released from prison in 1994

Child molesters and statutory rapists

Some of the 9,691 sex offenders were men whose imprisonment offense was a sex offense against a child Precisely how many is unknown In this report, the 4,295 who could be identified are called "child molesters" (table 2) The 4,295 identified child molesters included some (443 out of the 4,295) whose specific sex offense against a child was non-forcible intercourse These 443 are called "statutory rapists " There were more than 443 among the 4,295, but 443 were all that could be identified from the limited information obtained for the study

Both the 4,295 child molesters and the 443 statutory rapists were predominantly non-Hispanic white males Nearly three-fourths of the child molesters (73 2%) were age 30 or older Just over half the statutory rapists (54%) were 30 or older at the time they were released from prison

Among the released child molesters there were 3,333 white men (77 6% of 4,295) and 889 black men (20 7%) The 443 statutory rapists included 324 white men (73 2% of 443) and 110 black men (24 8%)

Table 2. Demographic characteristics of child molesters and statutory rapists released from prison in 1994

Prisoner characteristic	Percent of released prisoners: Child molesters	Statutory rapists
Total	100%	100%
Race		
White	77 6%	73 2%
Black	20 7	24 8
Other	1 7	2 0
Hispanic origin		
Hispanic	23 5%	15 9%
Non-Hispanic	76 5	84 1
Age at release		
18-24*	11 4%	24 8%
25-29	15 4	21 2
30-34	17 7	14 7
35-39	18 6	14 9
40-44	14 3	10 2
45 or older	22 6	14 2
Age at release		
Average	37 8 yrs	33 6 yrs
Median	36 5	31 0
Total released	4,295	443

Note The 4,295 child molesters were released in 15 States, the 443 statutory rapists in 11 States Because of overlapping definitions, all statutory rapists also appear under the column "child molesters " Data identifying race were reported for 99 5% of 4,295 released child molesters, Hispanic origin for 87 8%, and age for 100%
*Age at release 18-24 includes the few who were under age 18 when released from prison in 1994

All sex offenders

All 9,691 sex offenders selected to be in this study had a prison sentence greater than 1 year. The shortest terms were a day over 1 year; the longest were life sentences. The fact that sex offenders with a life sentence (18 offenders in the study) were among the 9,691 released in 1994 should not be surprising because only rarely do life sentences in the United States literally mean imprisonment for the remainder of a person's life. Most felons receiving a life sentence are eventually paroled (unpublished tabulation of data from the 1997 BJS Survey of Inmates in State Correctional Facilities).

On average, a sex offender released from prison in 1994 had an 8-year term and served 3½ years of that sentence (45%) before being released (table 3). Half of the released sex offenders had a sentence length of 6 years or less. Half had served no more than a third of their sentence before being released. When released, the majority (54.5%) had more than 3 years of their sentence remaining to be served.

Rapists and sexual assaulters

Rape always involves forcible intercourse, whereas sexual assault (as the term is used here) never does, although it can involve other types of forcible sexual assault. Because forcible intercourse is considered to be a more serious offense than other forms of forcible sexual assault, penalties for rape are generally more severe than those for sexual assault.

Consistent with the more serious nature of rape —

- on average a released rapist had a longer sentence (just over 11 years) than a sexual assaulter (just under 7 years)
- on average a rapist spent more time in confinement before being released (5¼ years) than a sexual assaulter (just under 3 years)
- median sentence length was longer for rapists (half of the rapists had a sentence of 9 years or more, while half of the sexual assaulters had a sentence of 5½ years or more)
- 39.2% of the 3,115 rapists were in prison for over 5 years prior to release, while 12.5% of the 6,576 sexual assaulters served 61 months or more
- rapists served 49% of their sentence before being released, compared to 43% for sexual assaulters.

Depending on the length of their sentence and the amount of time they had served before being released, some of the released sex offenders would have been on parole (or some other type of conditional release) throughout the full 3 years they were tracked in this study. For example, when released, 63.3% of rapists had more than 3 years left to serve on their sentence. In their case, any new crimes they committed during this 3-year followup period were offenses committed while still on parole. By comparison, just over half of released sexual assaulters had more than 3 years left to serve.

Table 3. Sentence length and time served for sex offenders released from prison in 1994, by type of sex offender

Characteristic	All	Rapists	Sexual assaulters
Sentence length (in months)			
Mean	97.3 mo	134.0 mo	82.5 mo
Median	72.0	108.0	66.0
Time served (in months)			
Mean	42.3 mo	62.6 mo	34.1 mo
Median	32.3	48.2	26.5
Percent of sentence served	44.9%	49.3%	43.1%
Upon release in 1994, percent who had served —			
6 months or less	4.5%	3.1%	5.0%
7-12	9.5	3.0	12.1
13-18	16.5	10.5	19.0
19-24	9.7	5.1	11.5
25-30	8.1	6.1	8.9
31-36	9.9	8.0	10.7
37-60	21.6	24.9	20.2
61 months or more	20.2	39.2	12.5
Upon release in 1994, percent with time still remaining to be served			
6 months or less	2.8%	2.4%	2.9%
7-12	5.0	5.7	4.7
13-18	8.4	6.2	9.2
19-24	12.8	9.3	14.2
25-30	8.1	6.2	8.8
31-36	8.5	6.9	9.1
37-60	25.1	22.8	26.0
61 months or more	29.4	40.5	24.9
Total first releases	6,470	1,859	5,860

Note: The 6,470 sex offenders were released in 13 States. Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Child molesters and sexual assaulters

On average, child molesters were released after serving nearly 3 years (33 7 months) of their nearly 7-year sentence (81 1 months) (table 4) Statutory rapists were released after serving a little over 2 years of their approximately 4-year sentence Upon release, almost half of the child molesters still had at least 3 years of their sentence remaining to be served, compared to 15% of statutory rapists

Table 4. Sentence length and time served for child molesters and statutory rapists released from prison in 1994

Characteristic	Child molesters	Statutory rapists
Sentence length (in months)		
Mean	81 1 mo	49 5 mo
Median	66 0	36 0
Time served (in months)		
Mean	33 7 mo	27 6 mo
Median	25 8	19 4
Percent of sentence served	43 3%	52 8%
Upon release in 1994, percent who had served —		
6 months or less	5 7%	9 6%
7-12	12 6	20 4
13-18	20 8	18 2
19-24	10 1	14 3
25-30	7 2	8 6
31-36	11 2	7 0
37-60	19 7	13 4
61 months or more	12 8	8 6
Upon release in 1994, percent with time still remaining to be served		
6 months or less	2 5%	10 8%
7-12	5 4	17 4
13-18	10.2	26 9
19-24	16 1	13 1
25-30	7 9	8 5
31-36	8 9	8 5
37-60	24 9	9 2
61 months or more	24 1	5 6
Total first releases	3 104	317

Note The 3,104 child molesters were released in 13 States, the 317 statutory rapists in 10 States Because of overlapping definitions, all statutory rapists also appear under the column "child molesters " Figures are based on first releases only First releases include only those offenders leaving prison for the first time since beginning their sentence First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release

All sex offenders

Arrests and convictions for minor traffic offenses, public drunkenness, and other petty crimes are often not entered into official criminal records. Since official records formed the basis for this study's statistics on arrests and convictions, these statistics understate levels of contact with the justice system. Statistics shown throughout this report on arrests and convictions pertain mostly to arrests and convictions for felonies and serious misdemeanors.

Statistics on prior arrests in this section of the report do not include the imprisonment offense for which the sex offender was in prison in 1994.

At the time the 9,691 male sex offenders were arrested for the sex crime that resulted in their imprisonment —

- 78.5% (7,607 of the 9,691 men) had been arrested at least one earlier time (table 5)
- half had 3 or more prior arrests for some type of crime
- 58.4% (5,660 men) had at least one prior criminal conviction
- 13.9% (1,347 men) had a prior conviction for a violent sex offense
- 4.6% (446 men) had been convicted for a sex crime against a child
- nearly a quarter had served time in a State or Federal prison at least once before for some type of crime.

All 9,691 were in prison in 1994 because they had been arrested and convicted for a sex offense. For 71.5% of the 9,691 men (6,929), that arrest was their first ever for a violent sex crime. In other words, these 6,929 men had no previous arrest for a sex offense. For the remaining 28.5% (2,762 men), that arrest was not their first sex offense arrest. Some had been arrested once before for a sex crime and some two or more times before.

To illustrate, one of the 9,691 sex offenders in this study had his first arrest for a sex crime in 1966, when he was age 19; he was also arrested for sex crimes in the 1970's and 1980's, in three different States. The arrest for his imprisonment offense was in 1982. In the early part of 1983, 4 months after his arrest, he was convicted of sexual assault and began serving a 25-year prison term. Eleven years later, in 1994 at age 47, he was released.

For 75% of the 9,691 sex offenders, their 1994 release represents their first release since being sentenced for their sex offense. The remaining 25% had previously served time under the same sentence, had been released, had violated one or more conditions of their parole and, consequently, were returned to prison to continue serving time still remaining on their sentence.

Table 5. Prior criminal record of sex offenders released from prison in 1994, by type of sex offender

Prior to the sex crime for which imprisoned	All	Rapists	Sexual assaulters
Percent with at least 1 prior arrest for — [a]			
Any crime	78.5%	83.1%	76.3%
Any sex offense	28.5	28.7	28.4
Sex offense against a child	10.3	5.7	12.5
Prior arrests for any crime[a]			
Mean	4.5	5.0	4.2
Median	3	3	2
Percent with at least 1 prior conviction for — [a]			
Any crime	58.4%	62.9%	56.2%
Any sex offense	13.9	14.6	13.5
Sex offense against a child	4.6	3.4	5.2
Prior convictions for any crime[a]			
Mean	1.8	2.0	1.7
Median	1	1	1
Percent with prior prison sentence for any crime[a]	23.7%	28%	21.6%
Percent who were first releases[b]	74.9%	66.9%	78.7%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.

[a]"Prior" does not include the arrest, conviction, or prison sentence that was the reason the sex offenders were in prison in 1994. Persons with no prior arrest or prior convictions were coded zero and were included in the calculations of mean and median priors. Calculation of prior convictions excluded Ohio, and calculation of prior prison sentences excluded Ohio and Virginia.

[b]Data on first releases are based on releases from 13 States. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Sex offenders compared to non-sex offenders

A total of 262,420 non-sex offenders were released from State prisons in 1994 in the 15 States. Of the 262,420 non-sex offenders, 94% had at least 1 prior arrest and 82% had at least 1 prior conviction (not in a table). Overall, the 9,691 sex offenders had a shorter criminal history than the 262,420 non-sex offenders Before the arrest that resulted in their prison sentence, sex offenders had been arrested 4 5 times, on average. This prior arrest record was about half that of non-sex offenders (8.9 prior arrests). In addition, among the 1994 prison releases, 23 7% of the sex offenders (2,297), compared to 44.3% of non-sex offenders (116,252), had served prior prison sentences.

Sex offenders were more likely to have been arrested (28 5%) or convicted (13 9%) for a sexual offense than non-sex offenders (6 5% with a prior arrest for a sex crime; 0.2% with a prior conviction for a sex crime) The same is true for child molesting — about 1 in 10 sex offenders had a prior arrest for a sex offense against a child, compared to about 1 in 100 non-sex offenders

Rapists and sexual assaulters

For approximately 71% of the 3,115 rapists, the arrest for rape that resulted in their imprisonment was their first for a sex crime. The remaining 29% had one or more prior sex crime arrests Likewise, for sexual assaulters, the sexual assault arrest that led to their imprisonment was the first arrest for a sex crime for 72% of the 6,576 sexual assaulters The remaining 28% had been arrested at least once before for some type of sex crime

Table 6. Prior criminal record of child molesters and statutory rapists released from prison in 1994

Prior to the sex crime for which imprisoned	Child molesters	Statutory rapists
Percent with at least 1 prior arrest for — [a]		
Any crime	76 8%	80 6%
Any sex offense	29 0	38 4
Sex offense against a child	18 3	19.6
Prior arrests for any crime[a]		
Mean	4 1	4 8
Median	2	3
Percent with at least 1 prior conviction for — [a]		
Any crime	54 6%	64 6%
Any sex offense	11 9	21.2
Sex offense against a child	7 3	11 5
Prior convictions for any crime[a]		
Mean	1 6	2.2
Median	1	1
Percent with prior prison sentence for any crime[a]	19 3%	23 4%
Percent who were first releases[b]	74 5%	73 7%
Total released	4,295	443

Note The 4,295 child molesters were released in 15 States, the 443 statutory rapists in 11 States Because of overlapping definitions, all statutory rapists also appear under the column "child molesters "

[a]"Prior" does not include the arrest, conviction, or prison sentence that was the reason the sex offenders were in prison in 1994 Persons with no prior arrest or prior convictions were coded zero and were included in the calculations of mean and median priors Calculation of prior convictions excluded Ohio, and calculation of prior prison sentences excluded Ohio and Virginia

[b]Data on first releases are based on releases from 13 States First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release

Child molesters and sexual assaulters

The 4,295 child molesters had at least 1 arrest for child molesting (the arrest that led to their imprisonment) For 3,509 (81.7%) of them, that arrest was their first ever arrest for child molesting (table 6). For the other 786 men (18.3% of the 4,295), that was not their first. Some had one prior arrest for a sex offense against a child, some had two, and others had three or more.

Among those with three or more priors was a man whose first arrest for child molesting was in 1966, when he was age 20 When released in 1994, he was serving an 11-year sentence for molesting a child under age 14 The prior criminal record of this serial pedophile spanned three decades, with arrests for child molesting in the 1970's, the 1980's, and the 1990's.

This section measures recidivism four ways:

- percent rearrested for any type of crime
- percent reconvicted for any type of crime
- percent returned to prison with a new prison sentence for any type of crime
- percent returned to prison with or without a new prison sentence.

"Percent rearrested" is calculated by dividing "the number rearrested" by "the number released from prison in 1994."

"Percent reconvicted" is obtained by dividing "the number reconvicted" by "the number released from prison in 1994." (It is *not* calculated by dividing "the number reconvicted" by "the number rearrested.")

"Percent returned to prison with a new sentence" is calculated by dividing "the number returned to prison with a new sentence" by "the number released from prison in 1994." (It is *not* calculated by dividing "the number returned to prison with a new sentence" by "the number reconvicted.")

Except where stated otherwise, all four recidivism measures —

- refer to the full 3-year period following the prisoner's release in 1994
- include both "in-State" and "out-of-State" recidivism.

"In-State" recidivism refers to new offenses committed within the State that released the prisoner in 1994. "Out-of-State" recidivism is any new offenses in States other than the one that released him in 1994.

Not all 4 of the recidivism measures are based on data from 15 States —

- "Percent rearrested" is based on 15 States
- "Percent reconvicted" is based on 14 of the 15 States participating in the study
- "Percent returned to prison with a new sentence" is based on 13 of the 15 States
- "Percent returned to prison with or without a new sentence" is based on 9 of the 15.

Three of the four recidivism measures were calculated from data on fewer than 15 States because the information needed to perform the calculations was not available (or not readily available) from each of the 15 participating States. Notes at the bottom of the tables alert readers to such missing data.

Four measures

All sex offenders

The 9,691 sex offenders in this study were all released from prison in 1994.

Within the first 3 years following their release —

- 43% (4,163 of the 9,691) were rearrested for at least 1 new crime (table 7)
- 24% (2,326 of the 9,691) were reconvicted for any type of crime
- 11.2% (1,085 of the 9,691) were returned to prison with another sentence
- 38.6% (3,741 of the 9,691) were returned to prison with or without a new sentence.

For approximately three-fourths of the 4,163 men who were rearrested for some new crime, their most serious rearrest offense was a felony; for the remaining fourth, the most serious was a misdemeanor (not shown in table).

Of the 4,163 men rearrested for some new offense, nearly 9 in 10 (87%) were still on parole when taken into custody (not shown in table).

Table 7. Recidivism rate of sex offenders released from prison in 1994, by recidivism measure and type of sex offender

Recidivism measure	Percent of released prisoners		
	All	Rapists	Sexual assaulters
Within 3 years following release:			
Rearrested for any type of crime	43.0%	46.0%	41.5%
Reconvicted for any type of crime[a]	24.0%	27.3%	22.4%
Returned to prison with a new sentence for any type of crime[b]	11.2%	12.6%	10.5%
Returned to prison with or without a new sentence[c]	38.6%	43.6%	36.1%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.
[b]"New prison sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percent returned to prison with a new sentence.
[c]"With or without a new sentence" includes prisoners with new sentences to State or Federal prisons plus prisoners returned for technical violations. Because of missing data, prisoners released in 6 States (Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia) were excluded from the calculation of percent returned to prison with or without a new sentence. New York State custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, California with a relatively high return-to-prison rate affects the overall rate of 38.6%. When California is excluded, the return-to-prison rate falls to 27.9%.

The 2,326 reconvicted for a new crime consisted of 1,672 (71 9%) whose most serious conviction offense was a felony, and 654 (28 1%) whose most serious offense was a misdemeanor (not shown in table)

Of the 2,326 reconvicted for any new crime after their release, 1,085 were resentenced to prison, and the remaining 1,241 were placed on probation or ordered to pay a fine or sentenced to short-term confinement in a local jail The 1,241 not resentenced to prison made up a little over half (53%) of the total 2,326 reconvicted One reason why over half were not resentenced to prison was that the new conviction offense for about 650 of the 2,326 newly convicted men (approximately 30%) was a misdemeanor rather than a felony, and State laws usually do not permit State prison sentences for misdemeanors

Altogether, 3,741 (38 6%) of the 9,691 released sex offenders were returned to prison either because of a new sentence or a technical violation Of the 3,741, 2,656 (71%) were returned for a technical violation, such as failing a drug test, missing an appointment with the parole officer, or being arrested for another crime, and 1,085 were returned with a new prison sentence The 2,656 consisted of 664 who were reconvicted but not resentenced to prison, plus 1,992 not reconvicted

As previously explained, a total of 1,241 released sex offenders were reconvicted but not resentenced to prison for their new crime The 1,241 included 664 (described immediately above) who were returned to prison for a technical violation The 664 were 54% of the 1,241, indicating that most of those who were reconvicted but not given a new prison sentence were, nevertheless, returned to prison

Sex offenders compared to non-sex offenders

The 15 States in this study released 272,111 prisoners altogether in 1994 The 9,691 released sex offenders made up 3 6% of that total The remaining 262,420 released prisoners were non-sex offenders Of the 262,420 non-sex offenders, 68% (179,391 men and women out of the 262,420) were rearrested for a new crime within 3 years (not shown in table) The 43% overall rearrest rate of the 9,691 released sex offenders (4,163 out of 9,691) was low by comparison

Another difference was the rearrest charge The rearrest offense was a felony for about 3 out of 4 (75%) of the 4,163 rearrested sex offenders (not shown in table) By comparison, about 84% of the 179,391 non-sex offenders were charged by police with a felony (not shown in table)

Of the 4,163 sex offenders rearrested for a new crime, nearly 9 in 10 (87%) were on parole when taken into custody, of the 179,391 rearrested non-sex offenders, also about 9 in 10 (85%) were on parole (not shown in table)

There was a difference in reconvictions The reconviction rate for the 9,691 released sex offenders was 24 0%, compared to 47 8% for 262,420 non-sex offenders released in 1994 (not shown in table) The 2,326 sex offenders reconvicted for any new crime included 1,672 (71 9%) whose most serious conviction offense was a felony (not shown in table) Of the 262,420 non-sex offenders, 125,437 (47 8%) were reconvicted, which included 94,078 (75 0%) whose most serious reconviction offense was a felony (not shown in table)

Rapists and sexual assaulters

Within the first 3 years following release —

- 46 0% of the 3,115 rapists (1,432 men) and 41 5% of the 6,576 sexual assaulters (2,731 men) were rearrested for all types of crimes (table 7)
- 27 3% of the 3,115 rapists (850 men) were reconvicted, compared to 22 4% of the 6,576 sexual assaulters (1,473 men) for all types of crimes
- 12 6% of the 3,115 rapists (392 men) and 10 5% of the 6,576 sexual assaulters (690 men) were resentenced to prison for their reconviction offense
- 43 6% of the 3,115 rapists (1,358 men) and 36 1% of the 6,576 sexual assaulters (2,374 men) were returned to prison either because of a new sentence or because of a technical violation of their parole

For approximately three-fourths of the 1,432 rapists who were rearrested for a new crime, the crime was a felony, for the remainder, the most serious was a misdemeanor (not shown in table) As indicated earlier, 2,731 sexual assaulters were rearrested for a new offense after their release, and for about three-fourths, their most serious rearrest offense was a felony, for the remainder, the most serious crime was a misdemeanor (not shown in table)

The 850 rapists reconvicted for any new crime included 617 (72 6%) whose most serious reconviction offense was a felony, the 1,473 reconvicted sexual assaulters included 1,052 (71 4%) who were reconvicted for a felony (not shown in table)

Child molesters and statutory rapists

Of the child molesters and statutory rapists released from prison in 1994 —

• 1,693 of the 4,295 child molesters (39.4%) and 221 of the 443 statutory rapists (49.9%) were rearrested for a new crime (not necessarily a new sex crime) (table 8)

• 876 of the 4,295 child molesters (20.4%) and 145 of the 443 statutory rapists (32.7%) were reconvicted for any type of crime

• 9% of the 4,295 child molesters and 13% of the 443 statutory rapists were resentenced to prison for their new conviction offense

• 38% of the 4,295 child molesters and 46% of the 443 statutory rapists were back in prison within 3 years as a result of either a new prison sentence or a technical violation of their parole.

The most serious offense for three-fourths of the 1,693 child molesters who were rearrested was a felony, and a misdemeanor for the remainder (not shown in table). Following their release in 1994, 221 statutory rapists were rearrested for a new crime. The most serious offense that approximately three-fourths were charged with was a felony (not shown in table).

The 876 child molesters reconvicted for any type of crime included 643 (73.4%) whose most serious reconviction offense was a felony; the 145 reconvicted statutory rapists included 97 (66.7%) whose most serious was a felony (not shown in table).

Table 8. Recidivism rate of child molesters and statutory rapists released from prison in 1994, by recidivism measure

Recidivism measure	Percent of released prisoners	
	Child molesters	Statutory rapists
Within 3 years following release:		
Rearrested for any type of crime	39.4%	49.9%
Reconvicted for any type of crime[a]	20.4%	32.7%
Returned to prison with a new sentence for any type of crime[b]	9.1%	13.2%
Returned to prison with or without a new sentence[c]	38.2%	45.7%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."

[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.

[b]"New prison sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percent returned to prison with a new sentence.

[c]"With or without a new sentence" includes prisoners with new sentences to State or Federal prisons plus prisoners returned for technical violations. Because of missing data, prisoners released in 6 States (Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia) were excluded from the calculation of percent returned to prison with or without a new sentence. New York State custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, California with a relatively high return-to-prison rate affects the overall rate of 39.4%. When California is excluded, the return-to-prison rate falls to 23.4%.

Time to recidivism

All sex offenders

Within 6 months following their release, 16% of the 9,691 men were rearrested for a new crime (not necessarily another sex offense) (table 9) Within 1 year, altogether 24 2% were rearrested Within 2 years the cumulative total reached 35 5% By the end of the 3-year followup period, 43% (4,163 of the 9,691) were rearrested for some type of crime

These statistics indicate that most recidivism within the first 3 years following release occurred in the first year (56%, since 24 2% / 43% = 56%)

While the bulk of rearrests occurred in the first year, that period did not account for the bulk of reconvictions or reimprisonments This is largely because a sizable number of those rearrested in the first year were not reconvicted and reimprisoned until sometime in the second year, due to the additional time needed to prosecute, convict, and sentence a criminal defendant For example, by the end of the first year, 8 6% of the 9,691 released sex offenders were reconvicted, and by the end of the third year, a cumulative total of 24% were reconvicted, indicating that the first year accounted for a relatively small percentage of all the reconvictions in the 3 years (36%, since 8 6% / 24% = 36%)

Rapists and sexual assaulters

Forty-six percent of released rapists were rearrested within 3 years, and over half of those rearrests (56%) occurred in the first year (since 25 8% / 46 0% = 56%) Similarly, 41 5% of released sexual assaulters were rearrested within the first 3 years following their 1994 release, and over half of those rearrests (56%) occurred in the first year (since 23 4% / 41 5% = 56%)

Table 9. Recidivism rate of sex offenders released from prison in 1994, by type of recidivism measure, type of sex offender, and time after release

Time after 1994 release	Cumulative percent of sex offenders released from prison in 1994		
	All	Rapists	Sexual assaulters
Rearrested for any type of crime within —			
6 months	16 0%	16 3%	15 8%
1 year	24 2	25 8	23 4
2 years	35 5	38 6	34 0
3 years	43 0	46 0	41 5
Reconvicted for any type of crime within —[a]			
6 months	3 6%	4 3%	3 3%
1 year	8 6	10 0	8 0
2 years	17 2	19 9	15 9
3 years	24 0	27 3	22 4
Returned to prison with a new sentence for any type of crime within —[b]			
6 months	1 8%	1 9%	1 8%
1 year	4 0	4 1	3 9
2 years	8 0	9 0	7 5
3 years	11 2	12 6	10 5
Total released	9 691	3,115	6,576

Note The 9,691 sex offenders were released in 15 States
[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted
[b]"New sentence" includes new sentences to State or Federal prisons but not to local jails Because of missing data prisoners released in Ohio and Virginia were excluded from the calculation of percentage returned to prison with a new sentence

Table 10. Recidivism rate of child molesters and statutory rapists released from prison in 1994, by type of recidivism measure and time after release

Time after 1994 release	Cumulative percent of sex offenders released from prison in 1994	
	Child molesters	Statutory rapists
Rearrested for any type of crime within —		
6 months	16 0%	18 5%
1 year	22 9	29 8
2 years	32 9	42 4
3 years	39.4	49 9
Reconvicted for any type of crime within —[a]		
6 months	3 0%	4 5%
1 year	7 1	13.6
2 years	14 5	24.4
3 years	20 4	32 7
Returned to prison with a new sentence for any type of crime within —[b]		
6 months	1 5%	0 9%
1 year	3 1	4 0
2 years	6 5	9 3
3 years	9 1	13.2
Total released	4,295	443

Note The 4,295 child molesters were released in 15 States, the 443 statutory rapists in 11 States Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted
[b]"New sentence" includes new sentences to State or Federal prisons but not to local jails Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percentage returned to prison with a new sentence

Child molesters and statutory rapists

Of the 4,295 released child molesters, 1,693 (39 4%) were rearrested during the 3-year followup period (table 10) The majority of those charged (approximately 982 of the 1,693, or 58%) were charged in the first 12 months. While 49.9% of released statutory rapists were rearrested within 3 years, nearly three-fifths of those rearrests occurred within the first year following release (29 8% / 49 9% = 60%)

Table 11. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and demographic characteristics of released prisoners

Prisoner characteristic	Percent rearrested for any type of crime within 3 years: All	Rapists	Sexual assaulters
Race			
White	36 7%	39 1%	35 8%
Black	56 1	55 0	57 0
Other	40 4	38 5	41 7
Hispanic origin			
Hispanic	42 2%	47 7%	39 6%
Non-Hispanic	45 9	50 2	44 3
Age at release			
18-24	59 8%	58 6%	60.2%
25-29	54.2	53 8	54 3
30-34	48 8	52 6	46 7
35-39	41 4	46 1	38 9
40-44	34 7	41 2	31 6
45 or older	23 5	23 0	23 7
Total released	9,691	3,115	6 576

Note The 9,691 sex offenders were released in 15 States Data identifying race were reported for 98 5%, Hispanic origin for 82 5%, age for virtually 100%

Demographic characteristics

All sex offenders

Race Black men (56 1%) released in 1994 were more likely than white men (36 7%) to be rearrested for a new crime (not limited to just a new sex crime) within the first 3 years following their release (table 11)

Hispanic origin Among released sex offenders, non-Hispanics (45 9%) were more likely than Hispanics (42 2%) to have a new arrest within the 3-year followup period

Age The younger the prisoner when released, the higher the rate of recidivism For example, of all the sex offenders under age 25 at the time of discharge from prison, 59 8% were rearrested for some type of crime within 3 years, or more than double the 23 5% of those age 45 or older

Table 12. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by demographic characteristics of released prisoners

Prisoner characteristic	Percent rearrested for any type of crime within 3 years: Child molesters	Statutory rapists
Race		
White	36 2%	46 0%
Black	51 7	61 5
Other	37 8	55 6
Hispanic origin		
Hispanic	37 1%	56 9%
Non-Hispanic	41 9	48 8
Age at release		
18-24	59 6%	70 0%
25-29	51 4	56 4
30-34	46 5	47 7
35-39	38 0	37 9
40-44	28 0	44 4
45 or older	23 8	23 8
Total released	4,295	443

Note The 4,295 child molesters were released in 15 States, the 443 statutory rapists in 11 States Data identifying race were reported for 98 5%, Hispanic origin for 82 5%, age for virtually 100%

Rapists and sexual assaulters

Race Among releasees whose imprisonment offense was sexual assault, 57% of black men and 35 8% of white men were rearrested for all types of crimes A higher rearrest rate for blacks was also found among released rapists

Hispanic origin Among released rapists, non-Hispanics (50 2%) were more likely than Hispanics (47 7%) to be rearrested within the 3-year followup period The same was true among released prisoners whose imprisonment offense was sexual assault

Age For both rapists and sexual assaulters, younger releasees had higher rearrest rates than older releasees

Table 13. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and time served before release

Time served in prison before 1994 release	Percent rearrested for any type of crime within 3 years: All	Rapists	Sexual assaulters
6 months or less	45 7%	48 3%	45 0%
7-12	42 1	32 1	43 1
13-18	38 9	37 6	39.2
19-24	46 7	51 1	45 9
25-30	44 6	42 9	45 1
31-36	35 7	42 6	33 7
37-60	38 9	43 2	36 7
61 months or more	39 9	43 4	35 5
Total first releases	6,470	1,859	5 860

Note The 6,470 sex offenders were released in 13 States Figures are based on first releases only First releases include only those offenders leaving prison for the first time since beginning their sentence First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release

Child molesters and statutory rapists

Race The rearrest rate among released child molesters was 51 7% for black men and 36 2% for white men (table 12) Among statutory rapists, black men (61 5%) had a higher rearrest rate than white men (46 0%)

Hispanic origin Among released prisoners whose imprisonment offense was statutory rape, Hispanics (56 9%) were more likely than non-Hispanics (48 8%) to be rearrested within the 3-year followup period The opposite was true of child molesters, as Hispanics had a lower rearrest rate (37 1%) than non-Hispanics (41 9%)

Age The younger the sex offender was when released, the higher was his likelihood of being rearrested For example, the rearrest percent for statutory rapists younger than 25 was higher (70 0%) than the rearrest percent for statutory rapists ages 25 to 30 (56 4%) The same was true among child molesters

Table 14. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by time served before being released

Time served in prison before 1994 release	Percent rearrested for any type of crime within 3 years: Child molesters	Statutory rapists
6 months or less	42 9%	56 7%
7-12	39 7	45 3
13-18	34 5	43 9
19-24	45 5	48 9
25-30	39 4	25 9
31-36	27 2	59 1
37-60	31 5	21 4
61 months or more	29 9	33 3
Total first releases	3 104	317

Note The 3,104 child molesters were released in 13 States, the 317 statutory rapists in 10 States Because of overlapping definitions, all statutory rapists also appear under the column "child molesters " Figures are based on first releases only First releases include only those offenders leaving prison for the first time since beginning their sentence First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release

Time served before 1994 release

All sex offenders

Sex offenders who served the shortest amount of time in prison before being released (6 months or less) had a higher rearrest rate (45 7%) than those who served the longest (over 5 years, 39 9% rate) (table 13) Similarly, prisoners who served 6 months or less had a higher rearrest rate (45 7%) than those who served 7 months to 1 year (42 1%) However, other comparisons did not indicate a connection between serving more time and lower recidivism For example, among sex offenders who served 1 to 1½ years in prison before being released, 38 9% were rearrested for all types of crimes, compared to 46 7% of sex offenders who served a bit longer — 1½ to 2 years Similarly, released prisoners who served between 3 and 5 years in prison had a higher rate of rearrest (38 9%) than released prisoners who served 2½ to 3 years (35 7%) Because of these mixed results, and others illustrated below, the data do not warrant any general conclusion about an association between the level of recidivism and the amount of time served

Rapists and sexual assaulters

Among sexual assaulters who served no more than 6 months, 45 0% were rearrested for all types of crimes Those who served a little longer — from about 6 months to 1 year — had a lower rearrest rate, 43 1% Those released after serving even more time — 1 to 1½ years — had an even lower rate, 39 2% However, there are numerous instances where serving more time was not linked to lower recidivism For example, rapists released after about 1 to 1½ years in prison had a 37 6% rearrest rate, while those imprisoned a little longer – from about 1½ to 2 years – had a higher rate, 51 1%

Child molesters and statutory rapists

Among released statutory rapists and child molesters, the results continued to be mixed regarding an association between the rate of recidivism and the amount of time served (table 14) For example, child molesters released after serving about 2 to 2½ years had a higher rate of rearrest for all types of crimes (39 4%) than those who served somewhat longer – about 2½ to 3 years (27 2%) However, the rearrest rate rose (31 5%) among molesters who served more time – 3 to 5 years

Table 15. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and prior arrest for any type of crime

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for any type of crime within 3 years			
Total	43.0%	46.0%	41.5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	24.8	28.3	23.6
Not their first arrest for any type of crime	47.9	49.6	47.1
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	21.5	16.9	23.7
Not their first arrest for any type of crime	78.5	83.1	76.3
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the sex crime arrest responsible for their being in prison in 1994.

Prior arrest for any type of crime

All sex offenders

For 2,084 sex offenders (21.5% of the 9,691 total), their only arrest prior to being released in 1994 was the arrest for their imprisonment offense (a sex offense) (table 15). Among these 2,084 released sex offenders with just 1 prior arrest, 24.8% were rearrested for a new crime (not necessarily a new sex crime). For the remaining 7,607 (78.5% of 9,691), their prior record showed an arrest for the sex offense responsible for their current imprisonment plus at least 1 earlier arrest for some type of crime. Of these 7,607 prisoners, 47.9% were rearrested, or about double the rate of their counterparts with 1 prior arrest (24.8%).

Rapists and sexual assaulters

Of the 3,115 released rapists, 83.1% (2,589 rapists) had more than 1 arrest for some type of crime prior to their release from prison in 1994, and 16.9% (526 rapists) had just 1 prior arrest, the arrest for the sex crime that resulted in their being in prison in 1994. The multiple prior arrests for the 2,589 rapists included the arrest for their imprisonment offense plus at least 1 other arrest for any type of crime. The 2,589 with more than 1 prior arrest had a rearrest rate (49.6%) nearly double that of the 526 with just 1 prior (28.3%).

Child molesters and statutory rapists

Of the 4,295 child molesters, 76.8% (3,299 men) had more than 1 prior arrest (table 16). These 3,299 child molesters had a rearrest rate (44.3%) nearly double the 23.3% rate of the 996 molesters with just 1 prior arrest (996 is 23.2% of 4,295). The 357 statutory rapists with more than 1 prior arrest (357 is 80.6% of 443) had a rearrest rate (55.7%) more than double the 25.6% rate of the 86 statutory rapists with 1 prior arrest (86 is 19.4% of 443).

Table 16. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by prior arrest for any type of crime

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for any type of crime within 3 years		
Total	39.4%	49.9%
The arrest responsible for their being in prison in 1994 was —*		
Their first arrest for any type of crime	23.3	25.6
Not their first arrest for any type of crime	44.3	55.7
Percent of released prisoners		
Total	100%	100%
The arrest responsible for their being in prison in 1994 was —*		
Their first arrest for any type of crime	23.2	19.4
Not their first arrest for any type of crime	76.8	80.6
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the sex crime arrest responsible for their being in prison in 1994.

Number of prior arrests for any type of crime

Statistics on prior arrests in this section of the report do include the imprisonment offense of the released sex offender

All sex offenders

The number of times a prisoner was arrested in the past was a relatively good predictor of whether that prisoner would continue his criminality after release (table 17) Prisoners with just one prior arrest for any type of crime had a 24 8% rearrest rate for all types of crimes With two priors, the percentage rearrested rose to 31 9% With three, it increased to 36 9% With four, it went up to 42 6% With additional priors, there were further increases, ultimately reaching a rearrest rate of 67 0% for released prisoners with the longest criminal record (more than 15 prior arrests)

Rapists and sexual assaulters

Both rapists and sexual assaulters followed the pattern described immediately above the more prior arrests they had, the more likely they were to have a new arrest for some type of crime after their release in 1994

Table 17. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and number of prior arrests for any type of crime

Number of adult arrests prior to 1994 release*	All	Rapists	Sexual assaulters
Percent rearrested for any type of crime within 3 years			
1 prior arrest for any type of crime	24 8%	28 3%	23 6%
2	31 9	36 4	29 9
3	36 9	36 3	37 1
4	42 6	47 2	40 4
5	50 5	48 6	51 6
6	49 7	47 3	50 9
7-10	59 0	59 6	58 6
11-15	65 1	63 7	66 0
16 or more	67 0	66 1	67 5
Percent of released prisoners			
All sex offenders	100%	100%	100%
1 prior arrest for any type of crime	21 5	16 9	23 7
2	16 0	15 2	16 3
3	11 9	12 1	11 8
4	9 0	9 2	8 9
5	7 2	8 0	6 8
6	6 3	6 6	6 1
7 10	14.4	15 8	13 8
11-15	7 9	8 9	7 4
16 or more	5 8	7 2	5 2
Total released	9,691	3,115	6,576

Note The 9,691 sex offenders were released in 15 States
*By definition, all sex offenders had at least 1 arrest prior to their release namely, the arrest responsible for their being in prison in 1994 In this table, that arrest is counted as 1 prior arrest

Child molesters and statutory rapists

Among released prisoners with the smallest number of prior arrests (1 prior arrest), 23 3% of child molesters and 25 6% of statutory rapists were rearrested for all types of crimes within 3 years (table 18) Rearrest rates generally rose with each increase in the number of prior arrests Among released prisoners with the largest number of prior arrests (more than 15), 62 0% of child molesters and 76 2% of statutory rapists had at least 1 new arrest after being released in 1994

Table 18. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by number of prior arrests for any type of crime

Number of adult arrests prior to 1994 release*	Child molesters	Statutory rapists
Percent rearrested for any type of crime within 3 years		
1 prior arrest for any type of crime	23 3%	25 6%
2	28 0	29 3
3	32 4	46 9
4	39 2	41 0
5	47 4	60 6
6	50 2	53 8
7-10	58 1	65 1
11-15	62 9	81 3
16 or more	62 0	76 2
Percent of released prisoners		
All sex offenders	100%	100%
1 prior arrest for any type of crime	23 2	19 4
2	17 2	13 1
3	12 1	11 1
4	8 5	8 8
5	7 0	7 4
6	6 4	5 9
7-10	13 6	18 7
11 15	7 3	10 8
16 or more	4 8	4 7
Total released	4,295	443

Note The 4,295 child molesters were released in 15 States, the 443 statutory rapists in 11 States Because of overlapping definitions, all statutory rapists also appear under the column "child molesters "
*By definition, all sex offenders had at least one arrest prior to their release namely the arrest responsible for their being in prison in 1994 In this table that arrest is counted as 1 prior arrest

State where rearrested for any type of crime

The State where the rearrest occurred was not always the State that released the prisoner In some cases, the released sex offender left the State where he was imprisoned and was rearrested for a new crime in a different State For example, a sex offender released from prison in California may have traveled to Nevada, where he was arrested for committing another crime

Sex offenders

A total of 4,163 sex offenders were rearrested for some type of new crime after their 1994 release Of the 4,163 arrests, 16 0% — or 1 in 6 — were outside the State where the prisoner was released (table 19) The rest (84 0%) were made in the State that released them

Sex offenders compared to non-sex offenders

The 15 States in this study released 262,420 non-sex offenders in 1994, of whom 179,391 were rearrested for a new crime within 3 years (not shown in table) Of the 179,391 arrests for any type of crime, 11 2%, or 20,092 arrests, were arrests that occurred outside the State that released them

Rearrested sex offenders had a higher percentage 1 in 6 of their rearrests for any type of crime were in a State other than the one that released them

Rapists and sexual assaulters

Following their 1994 release, 1,432 rapists and 2,731 sexual assaulters were rearrested for any new crime (table 19) For 17 4% of the 1,432 rearrested rapists, and 15 2% of the 2,731 rearrested sexual assaulters, the place where the arrest occurred was in a different State than the one that released them

Table 19. Where sex offenders were rearrested for any new crime following release from prison in 1994, by type of sex offender

State where rearrested within 3 years	Percent of rearrested prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Same State where released	84 0	82 6	84 8
Another State	16 0	17 4	15 2
Total rearrested for any new crime	4,163	1,432	2,731

Note The 4,163 rearrested sex offenders were released in 15 States but table percentages are based on 14 States

Child molesters and statutory rapists

Out of the 4,295 child molesters, 1,693 were rearrested for any new crime after being released from prison in 1994 (table 20) The 1,693 recidivists consisted of 84 8% whose new arrest was in the same State that released them in 1994, and 15 2% whose alleged violation occurred in a different State

About half of all statutory rapists were not rearrested for any type of crime after their release Of the 221 who were, 16 6% were rearrested outside the State where they were released

Table 20. Where child molesters and statutory rapists were rearrested for any new crime following release from prison in 1994

State where rearrested within 3 years	Percent of rearrested prisoners	
	Child molesters	Statutory rapists
Total	100%	100%
Same State where released	84 8	83 4
Another State	15 2	16 6
Total rearrested for any new crime	1,693	221

Note The 1,693 rearrested child molesters were released in 15 States but table percentages are based on 14 States The 221 rearrested statutory rapists were released in 11 States, but table percentages are based on 10 States

Rearrest and reconviction

All sex offenders

Based on official arrest records, 517 of the 9,691 released sex offenders (5.3%) were rearrested for a new sex crime within the first 3 years following their release (table 21). The new sex crimes for which these 517 men were arrested were forcible rapes and sexual assaults. For virtually all of the 517, the most serious sex crime for which they were rearrested was a felony. Their victims were children and adults. The study cannot say what percentage were children and what percentage were adults because arrest files did not record the victim's age.

Of the total 9,691 released sex, 3.5% (339 of the 9,691) were reconvicted for a sex crime (a forcible rape or a sexual assault) within 3 years.

Sex offenders compared to non-sex offenders

The 15 States in this study released a total of 272,111 prisoners in 1994. The 9,691 released sex offenders made up less than 4% of that total. Of the remaining 262,420 non-sex offenders, 3,328 (1.3%) were rearrested for a new sex crime within 3 years (not shown in table). By comparison, the 5.3% rearrest rate for the 9,691 released sex offenders was 4 times higher.

Assuming that the 517 sex offenders who were rearrested for another sex crime each victimized no more than one victim, the number of sex crimes they committed after their prison release totaled 517. Assuming that the 3,328 non-sex offenders rearrested for a sex crime after their release also victimized one victim each, the number of sex crimes they committed was 3,328. The combined total number of sex crimes is 3,845 (517 plus 3,328 = 3,845). Released sex offenders accounted for 13% and released non-sex offenders accounted for 87% of the 3,845 sex crimes committed by all the prisoners released in 1994 (517 / 3,845 = 13% and 3,328 / 3,845 = 87%).

Rapists and sexual assaulters

Of the 3,115 rapists, 5.0% (155 men) had a new arrest for a sex crime (either a sexual assault or another forcible rape) after being released. Of the 6,576 released sexual assaulters, 5.5% (362 men) were rearrested for a new sex crime (either a forcible rape or another sexual assault).

A total of 100 released rapists were reconvicted for a sex crime. The 100 men were 3.2% of the 3,115 rapists released in 1994. Among the 6,576 released sexual assaulters, 3.7% (243 men) were reconvicted for a sex crime.

Child molesters and statutory rapists

After their release, 5.1% (221 men) of the child molesters and 5.0% (22 men) of the statutory rapists were rearrested for a new sex crime (table 22). Not all of the new sex crimes were against children. The new sex crimes were forcible rapes and various types of sexual assaults.

Following their release, 3.5% (150 men) of the 4,295 released child molesters were convicted for a new sex crime against a child or an adult. The sex crime reconviction rate for the 443 statutory rapists was 3.6% (16 reconvicted men).

Table 21. Of sex offenders released from prison in 1994, percent rearrested and percent reconvicted for any new sex crime, by type of sex offender

	All	Rapists	Sexual assaulters
Percent rearrested for any new sex crime within 3 years	5.3%	5.0%	5.5%
Percent reconvicted for any new sex crime within 3 years*	3.5%	3.2%	3.7%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted. Due to data quality concerns, calculation of percent reconvicted excluded Texas prisoners classified as "other type of release."

Table 22. Of child molesters and statutory rapists released from prison in 1994, percent rearrested and percent reconvicted for any new sex crime

	Child molesters	Statutory rapists
Percent rearrested for any new sex crime within 3 years	5.1%	5.0%
Percent reconvicted for any new sex crime within 3 years*	3.5%	3.6%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted. Due to data quality concerns, calculation of percent reconvicted excluded Texas prisoners classified as "other type of release."

Time to rearrest

All sex offenders

Within 6 months following their release, 1.4% of the 9,691 men were rearrested for a new sex crime (table 23). Within 1 year the cumulative total grew to 2.1% rearrested. By the end of the 3-year followup period, altogether 5.3% had been rearrested for another sex crime. The first year was the period when 40% of the new sex crimes were committed (since 2.1% / 5.3% = 40%).

Rapists and sexual assaulters

The first year following release accounted for 40% of the new sex crimes committed by both released rapists (since 2.0% / 5.0% = 40%) and released sexual assaulters (since 2.2% / 5.5% = 40%).

Child molesters and statutory rapists

For child molesters and statutory rapists, the first year following their release was the period when the largest number of recidivists were rearrested. Similar to rapists and sexual assaulters, about 40% of the arrests for new sex crimes committed by child molesters and statutory rapists occurred during the first year (table 24).

Demographic characteristics

All sex offenders

Race Among sex offenders released from prison in 1994, black men (5.6%) and white men (5.3%) were about equally likely to be rearrested for another sex crime (table 25).

Hispanic origin Among released sex offenders, non-Hispanics were more likely to be rearrested for a new sex offense (6.4%) than Hispanics (4.1%). One reason for the lower rearrest rate for Hispanics may be that some were deported immediately following their release.

Age Recidivism studies typically find that, the older the prisoner when released, the lower the rate of recidivism. Results reported here on released sex offenders did not follow the familiar pattern. While the lowest rate of rearrest for a sex crime (3.3%) did belong to the oldest sex offenders (those age 45 or older), other comparisons between older and younger prisoners did not consistently show older prisoners' having the lower rearrest rate.

Table 23. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by type of sex offender and time after release

Time after 1994 release	Cumulative percent rearrested for any new sex crime within specified time: All	Rapists	Sexual assaulters
6 months	1.4%	1.3%	1.4%
1 year	2.1	2.0	2.2
2 years	3.9	3.7	4.1
3 years	5.3	5.0	5.5
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.

Table 24. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for any new sex crime, by time after release

Time after 1994 release	Cumulative percent rearrested for any new sex crime within specified time: Child molesters	Statutory rapists
6 months	1.3%	1.4%
1 year	2.2	2.0
2 years	3.9	3.2
3 years	5.1	5.0
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."

Table 25. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by demographic characteristics of released prisoners

Prisoner characteristic	Percent of released sex offenders rearrested for any new sex crime within 3 years
Total released	5.3%
Race	
White	5.3%
Black	5.6
Other	4.4
Hispanic origin	
Hispanic	4.1%
Non-Hispanic	6.4
Age at release	
18-24	6.1%
25-29	5.5
30-34	5.8
35-39	6.1
40-44	5.6
45 or older	3.3
Total released	9,691

Note: The 9,691 sex offenders were released in 15 States. Data identifying race were reported for 98.5% of 9,691 released sex offenders; Hispanic origin for 82.5%; age for virtually 100%.

Time served before 1994 release

All sex offenders

The study compared recidivism rates among prisoners who served different lengths of time before being released from prison in 1994 No clear association was found between how long they were in prison and their recidivism rate (table 26) For example, those sex offenders who served from 7 to 12 months were rearrested for a new sex crime at a higher rate (5 2%) than those who served slightly less time (3 8%), which seemed to suggest that serving more time raised the recidivism rate But other comparisons suggested the opposite Compared to men who were confined for 7 to 12 months (5 2% rearrest rate), those who served more time (13 to 18 months) were less likely to be rearrested for any new sex crime (4 1%)

Prior arrest for any type of crime

All sex offenders

Of the 9,691 released sex offenders, 21 5% (2,084 of the 9,691) had only 1 arrest in their criminal record up to the time they were released (table 27) That one arrest was the arrest for the sex crime that resulted in a prison term The remaining 78 5% (7,607 men) had the arrest for their imprisonment offense in their record, and they also had at least 1 earlier arrest for some type of crime For example, some had an earlier arrest for theft or a drug offense Most of them did not have an earlier arrest for a sex crime

Compared to the 2,084 sex offenders with the 1 arrest in their criminal record, the 7,607 with a longer prior arrest record were more likely to be rearrested for another sex crime (5 9% compared to 3 3%)

Rapists and sexual assaulters

Of the 3,115 released rapists, the majority (83 1% of the 3,115, or 2,589 men) had more than 1 arrest (for any type of crime) prior to release from prison in 1994 Of these 2,589 released rapists, 5 4% (140) had a new arrest for a sex crime The rate was lower (3 0%) for the 526 released rapists with no prior arrest

Results for sexual assaulters followed the same pattern the 5,017 sexual assaulters with more than 1 prior arrest (76 3% of 6,576 is 5,017) were more likely to be rearrested for a new sex crime (6 2%) than the 1,559 with just the 1 prior arrest (23 7% of 6,576 is 1,559)

Table 26. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by time served before being released

Time served in prison before 1994 release	Percent of released sex offenders rearrested for any new sex crime within 3 years
6 months or less	3 8%
7-12	5 2
13-18	4 1
19-24	6 4
25-30	5 2
31-36	3 3
37-60	5 2
61 months or more	4 9
Total first releases	6,470

Note The 6,470 sex offenders were released in 13 States Figures are based on first releases only First releases include only those offenders leaving prison for the first time since beginning their sentence First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release

Table 27. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by type of sex offender and prior arrest for any type of crime

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for any new sex crime within 3 years			
Total	5 3%	5 0%	5 5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	3 3	3 0	3 4
Not their first arrest for any type of crime	5 9	5 4	6 2
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	21 5	16 9	23 7
Not their first arrest for any type of crime	78 5	83 1	76 3
Total released	9 691	3 115	6,576

Note The 9,691 sex offenders were released in 15 States
*By definition, all sex offenders had at least 1 arrest prior to their release namely, the arrest responsible for their being in prison in 1994 "First arrest for any type of crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994

Child molesters and statutory rapists

Released child molesters with more than one prior arrest were more likely than those with only one arrest in their criminal record to be rearrested for a new sex crime (5 7% compared to 3 2%) (table 28) The same was true of statutory rapists (5 3% compared to 3 5%)

Number of prior arrests for any type of crime

All sex offenders

The more arrests (for any type of crime) the sex offender had in his criminal record, the more likely he was to be rearrested for another sex crime after his release from prison (table 29) Sex offenders with one prior arrest (the arrest for the sex crime for which they had been imprisoned) had the lowest rate, about 3%, those with 2 or 3 prior arrests for some type of crime, 4%, 4 to 6 prior arrests, 6%, 7 to 10 prior arrests, 7%, and 11 to 15 prior arrests, 8%

Table 28. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for any new sex crime, by prior arrest for any type of crime

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for any new sex crime within 3 years		
Total	5 1%	5 0%
The arrest responsible for their being in prison in 1994 was — *		
Their first arrest for any type of crime	3 2	3 5
Not their first arrest for any type of crime	5 7	5 3
Percent of released prisoners		
Total	100%	100%
The arrest responsible for their being in prison in 1994 was — *		
Their first arrest for any type of crime	23.2	19 4
Not their first arrest for any type of crime	76 8	80 6
Total released	4,295	443

Note The 4,295 child molesters were released in 15 States, the 443 statutory rapists in 11 States Because of overlapping definitions, all statutory rapists also appear under the column "child molesters "

*By definition, all sex offenders had at least 1 arrest prior to their release namely the arrest responsible for their being in prison in 1994 "First arrest for any type of crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994

Table 29. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by number of prior arrests for any type of crime

Number of adult arrests prior to 1994 release	Percent rearrested for any new sex crime within 3 years
All sex offenders	5 3%
1 prior arrest for any type of crime	3 3
2	4 3
3	4 4
4	5 8
5	6 3
6	6 1
7-10	6 9
11-15	7 8
16 or more	7 4
	Percent of released prisoners
All sex offenders	100%
1 prior arrest for any type of crime	21 5
2	16 0
3	11 9
4	9 0
5	7 2
6	6 3
7-10	14 4
11-15	7 9
16 or more	5 8
Total released	9,691

Note The 9,691 sex offenders were released in 15 States By definition all sex offenders had at least 1 arrest prior to their release namely the arrest responsible for their being in prison in 1994 In this table, that arrest is counted as one prior arrest.

Prior arrest for a sex crime

All sex offenders

Prior to their release in 1994, 2,762 of the sex offenders (28 5% of the total 9,691) had 2 or more arrests for a sex offense in their criminal record the arrest for the sex offense that resulted in their imprisonment, plus at least 1 earlier arrest for a sex crime (table 30) For the remaining 6,929 (71 5% of the total 9,691), their only prior arrest for a sex crime was the arrest that brought them into prison (Any other prior arrests the 6,929 may have had were for non-sex crimes) Following their release, the 2,762 with more than 1 sex crime in their criminal background were about twice as likely to be rearrested for another sex crime (8 3%) as the 6,929 with a single prior arrest (4 2%)

Rapists and sexual assaulters

Rapists (4 0%) and sexual assaulters (4 2%) with one prior arrest for a sex crime were less likely to be rearrested for another sex crime than rapists (7 4%) and sexual assaulters (8 7%) who had been arrested two or more times for a sex crime prior to release from prison in 1994

Child molesters and statutory rapists

By definition, all 4,295 child molesters had been arrested for a sex offense at least once prior to their release in 1994 — the sex offense that landed them in prison For 3,049 of them (71% of 4,295), that arrest was their only prior arrest for a sex offense (table 31) The remaining 1,246 child molesters (29% of 4,295) had at least 2 prior arrests for a sex crime the arrest for their imprisonment offense plus at least 1 other prior arrest for a sex offense (not necessarily one against a child) Of the 1,246 child molesters with multiple sex crimes in their past, 8 4% (105 of the 1,246) were rearrested for another sex crime (not necessarily another sex crime against a child), or more than double the 3 8% rate for the 3,049 released child molesters with just 1 prior arrest for a sex crime

Similar results were found for released statutory rapists Those with a more extensive record of prior arrests for sex crimes were more likely to be rearrested for another sex crime (8 8%) than those with just one past arrest (2 6%)

Table 30. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by type of sex offender and prior arrest for any sex crime

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for any new sex crime within 3 years			
Total	5 3%	5 0%	5 5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any sex crime	4 2	4 0	4 2
Not their first arrest for any sex crime	8 3	7 4	8 7
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any sex crime	71 5	71 3	71 6
Not their first arrest for any sex crime	28 5	28 7	28 4
Total released	9,691	3 115	6,576

Note The 9,691 sex offenders were released in 15 States
*By definition, all sex offenders had at least 1 arrest prior to their release namely, the arrest responsible for their being in prison in 1994 "First arrest for any sex crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994

Table 31. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for any new sex crime, by prior arrest for any sex crime

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for any new sex crime within 3 years		
Total	5 1%	5 0%
The arrest responsible for their being in prison in 1994 was — *		
Their first arrest for any sex crime	3 8	2 6
Not their first arrest for any sex crime	8 4	8 8
Percent of released prisoners		
Total	100%	100%
The arrest responsible for their being in prison in 1994 was — *		
Their first arrest for any sex crime	71 0	61 6
Not their first arrest for any sex crime	29 0	38 4
Total released	4,295	443

Note The 4,295 child molesters were released in 15 States, the 443 statutory rapists, 11 States Because of overlapping definitions, all statutory rapists also appear under the column "child molesters "
*By definition, all sex offenders had at least 1 arrest prior to their release namely, the arrest responsible for their being in prison in 1994 "First arrest for any sex crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994

State where rearrested for a sex crime

When sex offenders were arrested for new sex crimes after their release, the new arrest typically occurred in the same State that released them. Those arrests are referred to as "in-State" arrests. When released sex offenders left the State where they were incarcerated and were charged by police with new sex crimes, those arrests are referred to as "out-of-State" arrests.

All sex offenders

Of the 9,691 released sex offenders, 517 were rearrested for a new sex crime within 3 years. Most of those sex crime arrests (85.2% of the 517, or 440 men) were in the same State that released them (table 32). Seventy-seven of them (14.8% of the 517) were arrests in a different State.

Sex offenders compared to non-sex offenders

The 15 States in this study released 262,420 non-sex offenders in 1994, of whom 3,328 were rearrested for a new sex crime within 3 years (not shown in table). Of the 3,328 non-sex offenders arrested for a new sex crime, an estimated 10% were men rearrested outside the State that released them. The 15% figure for released sex offenders was high by comparison (table 32).

Rapists and sexual assaulters

A total of 155 released rapists and 362 released sexual assaulters were rearrested for a new sex crime within the 3-year followup period. In-State arrests for new sex crimes accounted for 85% of the rearrested rapists and 85% of the rearrested sexual assaulters. Out-of-State arrests accounted for the rest.

Child molesters and statutory rapists

A total of 221 child molesters were rearrested for a new sex crime (not necessarily against a child) after their release (table 33). Among the 221 were 191 (86.6%) whose new sex crime arrest was in the same State that released them in 1994. For the remaining 13.4%, the arrest was elsewhere.

Of all statutory rapists, 5% (22) were rearrested for a new sex crime after their release. Of these 22, none had the new arrest outside the State that released them.

Table 32. Where sex offenders were rearrested for a new sex crime following their release from prison in 1994, by type of sex offender

State where rearrested within 3 years	Percent of rearrested prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Same State where released	85.2	85.2	85.2
Another State	14.8	14.8	14.8
Total rearrested for a new sex crime	517	155	362

Note: The 517 rearrested sex offenders were released in 15 States, but table percentages are based on 14 States.

Table 33. Where child molesters and statutory rapists were rearrested for a new sex crime following their release from prison in 1994

State where rearrested within 3 years	Percent of rearrested prisoners	
	Child molesters	Statutory rapists
Total	100%	100%
Same State where released	86.6	100
Another State	13.4	0
Total rearrested for a new sex crime	221	22

Note: The 221 rearrested child molesters were released in 14 States, but table percentages are based on 13 States. The 22 rearrested statutory rapists were released in 6 States, but table percentages are based on 5 States.

Undercounts of sex crimes against children

This section documents percentages of men who were arrested for a sex crime against a child after their release from prison in 1994. To some unknown extent, these recidivism rates undercount actual rearrest rates. That is because the arrest records that the study used to document sex crime arrests did not always contain enough information to identify those sex crime arrests in which the victim of the crime was a child. Some sense of the potential size of the undercount can be gained by comparing rearrests for any sex crime and rearrests for any sex crime against a child. Rates of rearrest for a sex crime (tables 21 and 22) are from 2 to 3½ percentage points higher than rates of rearrest for a sex crime against a child (tables 34 and 35), suggesting that rates of rearrest for a sex crime against a child could be, at most, a few percentage points below actual rates.

No data on precise ages of molested children

This section also documents the ages of the children that the men were alleged to have molested after their release from prison. Sex crime statutes contained in the arrest records of the released prisoners were used to obtain ages. The first step was to identify those sex crime statutes that were applicable just to children. Among those that were, some were found to apply just to children whose age fell within a certain range (for example, under 12, or 13 to 15, or 16 to 17). Those statutes applicable to children within specified age ranges became the source of information on the approximate ages of the allegedly molested children. Information on precise ages could not be determined because statutes applicable just to children of a specific age (for example, just to 12-year-olds, or just to age 15-year-olds) do not exist.

Rearrest

All sex offenders

Following their release in 1994, 209 of the total 9,691 released sex offenders (2.2%) were rearrested for a sex offense against a child (table 34). For virtually all 209, the rearrest offense was a felony. For the reason given earlier, the 2.2% figure undercounts the percentage rearrested for a sex offense against a child. It seems unlikely that the correct figure could be as high as 5.3% (table 21), which is the percentage rearrested for a sex crime against a person of any age. The only way it could be that high is if none of the sex crime arrests after release were crimes in which the victim was an adult, an unlikely possibility. The more likely possibility is that the 2.2% figure undercounts the rate by a maximum of 1 or 2 percentage points.

An estimated 76% of the children allegedly molested by the 209 men after their prison release were age 13 or younger, 12% were 14- or 15-years-old, and the remaining 12% were 16- or 17-years-old.

Sex offenders compared to non-sex offenders

Prisons in the 15 States in the study released 272,111 prisoners altogether in 1994, 9,691 of whom were the sex offenders in this report. As previously stated, 2.2% of the 9,691 sex offenders were rearrested for a child sex crime after their release. That rate is high compared to the rate for the remaining 262,420 non-sex offenders. Of the 262,420 non-sex offenders, less than half of 1 percent (1,042 of the 262,420) were rearrested for a sex offense against a child within the 3-year followup period (not shown in table).

Since each of the 1,042 was charged at arrest with molesting at least 1 child, the total number they allegedly molested was conservatively estimated at 1,042. Of the conservatively estimated 1,042 children, 65% were age 13 or younger, 11% were 14- or 15-years-old, and 24% were 16- or 17-years-old (not shown in table). (These percentages were based on the 554 cases out of the 1,042 in which the approximate age of the child could be determined.)

Table 34. Of sex offenders released from prison in 1994, percent rearrested for a sex crime against a child, and percent of their alleged victims, by age of victim and type of sex offender

	Percent rearrested for a sex crime against a child within 3 years		
	All	Rapists	Sexual assaulters
Total	2.2%	1.4%	2.5%
Number released	9,691	3,115	6,576
Age of child that sex offender was charged with molesting after release	Percent of allegedly molested children		
13 or younger	76.2%	89.3%	72.3%
14-15	11.5	0.0*	14.9
16-17	12.3	10.7*	12.8
Number of molested children	209	44	165

Note: The 9,691 sex offenders were released in 15 States. The approximate ages of the children allegedly molested by the 209 prisoners after their release were available for 58.4% of the 209. "Number of molested children" was set to equal the number of released sex offenders rearrested for child molesting.
*Percentage based on 10 or fewer cases.

Assuming that the 209 sex offenders who were rearrested for a sex crime against a child each victimized no more than one child, the number of sex crimes they committed against children after their prison release totaled 209 Assuming that the 1,042 non-sex offenders rearrested for a sex crime against a child after their release also victimized only one child, the number of sex crimes against a child that they committed was 1,042 The combined total number of sex crimes is 1,251 (209 plus 1,042 = 1,251) Released sex offenders accounted for 17% and released non-sex offenders accounted for 83% of the 1,251 sex crimes against children committed by all the prisoners released in 1994 (209 / 1,251 = 17% and 1,042 / 1,251 = 83%)

Rapists and sexual assaulters

Following their 1994 release, 1 4% of the 3,115 rapists (44 men) and 2 5% of the 6,576 sexual assaulters (165 men) were rearrested for molesting a child (table 34)

Child molesters and statutory rapists

Within 3 years following their release from prison in 1994, 141 (3 3%) of the released 4,295 child molesters and 11 (2 5%) of the 443 released statutory rapists were rearrested for molesting another child (table 35) For the reasons outlined earlier, these percentages undercount actual rearrest rates by a few percentage points at most

Each of the 141 released molesters rearrested for repeating their crime represented at least 1 child victim Of the conservatively estimated 141 children allegedly molested by released child molesters, 79% were age 13 or younger, 9% were 14 or 15 years of age, and 12% were ages 16 or 17

Table 35. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for a sex crime against a child, and percent of their alleged victims, by age of victim

	Percent rearrested for a sex crime against a child within 3 years	
	Child molesters	Statutory rapists
Total	3 3%	2 5%
Number released	4 295	443
Age of child that sex offender was charged with molesting after release	Percent of allegedly molested children	
13 or younger	79 2%	30 0*%
14-15	9 1	10 0*
16-17	11 7	60 0*
Number of molested children	141	11

Note The 4,295 child molesters were released in 15 States, the 443 statutory rapists in 11 States Because of overlapping definitions all statutory rapists also appear under the column "child molesters " The approximate ages of the children allegedly molested by the 141 prisoners after their release were available for 54 6% of the 141 "Number of molested children" was set to equal the number of released sex offenders rearrested for child molesting
*Percentage based on 10 or fewer cases

Prior arrest for a sex crime against a child

All sex offenders

After their 1994 release from prison, sex offenders with a prior arrest for child molesting were more likely to be arrested for child molesting (6 4%) than those who had no arrest record for sex with a child (1 7%) (table 36)

Table 36. Of sex offenders released from prison in 1994, percent rearrested for a sex crime against a child, by prior arrest for a sex crime against a child and type of sex offender

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for a sex crime against a child within 3 years			
Total	2 2%	1 4%	2 5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for a sex crime against a child	1 7	1 3	1 9
Not their first arrest for a sex crime against a child	6 4	4 0	6 9
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was — *			
Their first arrest for a sex crime against a child	89 7	94 3	87 5
Not their first arrest for a sex crime against a child	10 3	5 7	12 5
Total released	9,691	3,115	6,576

Note The 9,691 sex offenders were released in 15 States
*By definition, all sex offenders had at least 1 arrest prior to their release namely, the arrest responsible for their being in prison in 1994 "First arrest for a sex crime against a child" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994

Rapists and sexual assaulters

After being released in 1994, 4 0% of rapists with a prior arrest record for child molesting and 1 3% of those without were arrested for child molesting The same pattern — having a history of alleged child molesting was associated with a greater likelihood of arrest for child molesting — was found for sexual assaulters Those with a prior arrest had a 6 9% rate, those without, 1 9%

Child molesters and statutory rapists

The 4,295 released child molesters fell into 2 categories 1) 3,509 (81 7% of the 4,295) whose criminal record prior to their 1994 release contained no more than 1 arrest for a sex offense against a child (this was the offense for which they were imprisoned), and 2) 786 (18 3%) whose record showed the arrest for their imprisonment offense plus at least one earlier arrest for a sex offense against a child (table 37) After release, 7 3% of the 786 and 2 4% of the 3,509 were rearrested for molesting another child, indicating that child molesters with multiple arrests for child molesting in their record posed a greater risk of repeating their crime than their counterparts

Similarly, the 443 statutory rapists consisted of —

- 356 (80 4%) whose first arrest for a sex offense against a child was the arrest that resulted in their current imprisonment
- 87 (19 6%) with more than 1 prior arrest for a sex offense against a child

The 87 were more likely to be rearrested for child molesting (6 9%) than the 356 (1 4%)

Molester's and child's ages at time of imprisonment offense

Child molesters

The released child molesters were all men who were arrested, convicted, and

Table 37. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for a sex crime against a child, by prior arrest for a sex crime against a child

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for a sex crime against a child within 3 years	3 3%	2 5%
The arrest responsible for their being in prison in 1994 was —*		
Their first arrest for a sex crime against a child	2 4	1 4
Not their first arrest for a sex crime against a child	7 3	6 9
Percent of released prisoners	100%	100%
The arrest responsible for their being in prison in 1994 was —*		
Their first arrest for a sex crime against a child	81 7	80 4
Not their first arrest for a sex crime against a child	18 3	19 6
Total released	4,295	443

Note The 4,295 child molesters were released in 15 States, the 443 statutory rapists in 11 States Because of overlapping definitions all statutory rapists also appear under the column "child molesters "

*By definition all sex offenders had at least 1 arrest prior to their release the arrest responsible for their being in prison in 1994 "First arrest for a sex crime against a child" pertains exclusively to those released prisoners whose first arrest was responsible for their being in prison in 1994

Table 38. Among child molesters released from prison in 1994, the molester's age when he committed the crime that resulted in his imprisonment, the child's age, and percent rearrested for a sex crime against a child

Age characteristic	Percent of total	Percent of released child molesters rearrested for a sex crime against a child within 3 years
Child molester's age when he committed the sex crime for which imprisoned[a]		
18-24	19 7%	4 1%
25-29	17 4	3 1
30-34	18 7	3 3
35-39	16 3	1 2
40-44	11 5	2 8
45 or older	16 4	3 0
Age of child he was imprisoned for molesting[b]		
13 or younger	60 3%	2 8%
14-15	30 5	3 7
16-17	9 2	1 2
How much older he was than the child he was imprisoned for molesting		
Up to 5 years older	3 9%	4 9*%
5 to 9 years older	13 6	3 6
10 to 19 years older	34 1	3 2
20 or more years older	48 4	2 5
Total first releases	3 104	3 104

Note The 3,104 child molesters were released in 13 States Figures are based on first releases only, those offenders leaving prison for the first time since beginning their sentence First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release Data identifying the child molester's age were reported for 100% of the released child molesters Data identifying the approximate age of the child were reported for 88 1%

[a]The molester's age at the time of the crime for which imprisoned was estimated by subtracting 6 months (the approximate average time from arrest to sentencing) from his age at admission

[b]The approximate age of the child "he was imprisoned for molesting" was usually obtained from the State statute the molester was convicted of violating

*Percentage based on 10 or fewer cases

sentenced to prison for a sex crime against a child At the time they committed their imprisonment offense, most (62 9%) were age 30 and older, and most (60 3%) molested a child who was age 13 or younger (table 38) Some of the victims were below age 7 Nearly half of the men (48 4%) were 20 years or more older than the child they were imprisoned for molesting

Among the men who were in prison for molesting a child age 13 or younger and who were released in 1994 for that crime, 2 8% were subsequently arrested for molesting another child Of those whose imprisonment offense was against a 14- or 15-year-old, 3 7% had a new arrest for child molesting after their release Of the men who were in prison for molesting a 16- or 17-year-old, 1 2% were arrested by police for molesting another child after leaving prison in 1994

Among the men who were 20 years or more older than the child they were imprisoned for molesting, 2 5% were rearrested for another sex offense against a child within the first 3 years following their release That is a lower rate than the 3 2% rate for men who were 10 to 19 years older than the child victim in their imprisonment offense, and compared to the 3 6% for those 5 to 9 years older than the victim in their imprisonment offense

State where rearrested for a sex crime against a child

When sex offenders were arrested for new sex crimes against children after their release, the new arrest typically occurred in the same State that released them Those arrests are referred to as "in-State" arrests When arrests occurred in a different State, they are referred to as "out-of-State "

All sex offenders

Of the 9,691 sex offenders, 209 were rearrested for child molesting after their release from prison in 1994 (table 39) In 180 cases (86 3%), the alleged crime took place in the State that released him In the 29 others (13 7%), it occurred elsewhere

Sex offenders compared to non-sex offenders

The 15 States in this study released 262,420 non-sex offenders in 1994, of whom 1,042 were rearrested for a sex crime against a child (not shown in table) Of the 1,042 arrests, 11% were out-of-State rearrests The comparable figure for released sex offenders was higher 14% (table 39)

Rapists and sexual assaulters

Forty-four released rapists and 165 released sexual assaulters were rearrested for a sex crime against a child within 3 years Out-of-State arrests for child molesting accounted for 13 5% of the 44 rearrested rapists and 13 7% of the 165 rearrested sexual assaulters

Child molesters and statutory rapists

Police arrested 141 of the 4,295 released child molesters for repeating their crime (table 40) For 126 of them (89 2%), the new arrest for child molesting was in the same State that released them For 15 (10 8%), the new charges for child molesting were filed in a different State

Of the 443 statutory rapists released from prison in 1994, 11 were rearrested for child molesting All 11 of the arrests were in the same State that released the men

Table 39. Where sex offenders were rearrested for a sex crime against a child following their release from prison in 1994, by type of sex offender

State where rearrested within 3 years	Percent of rearrested prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Same State where released	86 3	86 5	86 3
Another State	13 7	13 5	13 7
Total rearrested for a new sex crime against a child	209	44	165

Note The 209 rearrested sex offenders were released in 10 States but table percentages are based on 9 States

Table 40. Where child molesters and statutory rapists were rearrested for a sex crime against a child following their release from prison in 1994

State where rearrested within 3 years	Percent of rearrested prisoners	
	Child molesters	Statutory rapists
Total	100%	100%
Same State where released	89 2	100
Another State	10 8	0
Total rearrested for a new sex crime against a child	141	11

Note The 141 rearrested child molesters were released in 9 States but table percentages are based on 8 States The 11 rearrested statutory rapists were released in 3 States but table percentages are based on 2 States

All sex offenders

Of the 9,691 male sex offenders released from prison in 1994 —

- 43% (4,163 men) were rearrested for a crime of any kind (table 41)
- 5.3% (517 men) were rearrested for a sex offense
- 17.1% (1,658 men) were rearrested for a violent crime
- 13.3% (1,285 men) were rearrested for a property crime of some kind.

Of the 9,691 released men, 168 (1.7%) were rearrested for rape and 396 (4.1%) were rearrested for sexual assault. The 168 rearrested for rape plus the 396 rearrested for sexual assault totals 564, which is 47 greater than the total 517 who were rearrested for a sex crime. The reason is that 47 men were rearrested for both rape and sexual assault.

The category of violent crime for which a prisoner was most likely to be rearrested was assault (8.8%, or 848 of the 9,691); the category least likely was homicide (0.5%, or 45 of the 9,691 men).

Just over 1 in 5 sex offenders (2,045 out of 9,691) were rearrested for a public-order offense, such as a parole violation or traffic offense.

Rapists and sexual assaulters

Among the 3,115 released rapists —

- 46% (1,432) were rearrested for a crime of any kind
- 18.7% (582) were rearrested for a violent crime
- 0.7% (22) were rearrested for homicide
- 14.7% (459) were rearrested for a property offense.

A relatively small percentage of rapists (2.5%, or 78 of the 3,115) were charged with repeating the crime for which they were imprisoned.

Among the 6,576 released sexual assaulters —

- 41.5% (2,731) were rearrested for a crime of any kind
- 16.4% (1,076) were rearrested for a violent crime
- 0.3% (23) were rearrested for killing someone
- 12.6% (826) were rearrested for a property offense.

Nearly 1 in 20 released sexual assaulters (4.7%, or 308 of the 6,576) were charged with committing the same type of crime for which had just served time in prison.

Table 41. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and charge at rearrest

	Percent rearrested for specified offense within 3 years		
Rearrest charge	All	Rapists	Sexual assaulters
All charges[a]	43.0%	46.0%	41.5%
Violent offenses[b]	17.1%	18.7%	16.4%
Homicide[c]	0.5	0.7	0.3
Sex offense[d]	5.3	5.0	5.5
Rape	1.7	2.5	1.4
Sexual assault	4.1	2.8	4.7
Robbery	2.7	3.9	2.1
Assault	8.8	8.7	8.8
Property offenses[e]	13.3%	14.7%	12.6%
Burglary	3.8	4.4	3.5
Larceny/theft	5.7	6.1	5.6
Motor vehicle theft	1.7	2.3	1.4
Fraud	2.1	1.8	2.2
Drug offenses[f]	10.0%	11.2%	9.4%
Public-order offenses[g]	21.1%	20.4%	21.4%
Other offenses	5.9%	5.0%	6.3%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States. Detail may not add to totals because persons may be rearrested for more than one type of charge.
[a]All offenses include any offense type listed in footnotes *b* through *f* plus "other" and "unknown" offenses.
[b]Total violent offenses include homicide, kidnaping, rape, other sexual assault, robbery, assaults, and other violence.
[c]Homicide includes murder, voluntary manslaughter, vehicular manslaughter, negligent manslaughter, nonnegligent manslaughter, unspecified manslaughter, and unspecified homicide.
[d]Includes both rape and sexual assault.
[e]Total property offenses include burglary, larceny, motor vehicle theft, fraud, forgery, embezzlement, arson, stolen property, and other forms of property offenses.
[f]Drug offenses include drug trafficking, drug possession, and other forms of drug offenses.
[g]Public-order offenses include traffic offenses, weapon offenses, probation and parole violations, court-related offenses, disorderly conduct, and other such offenses.

Child molesters and statutory rapists

Of the 4,295 child molesters released from prison in 1994 —

- 39 4% (1,693) were rearrested for a crime of any kind (table 42)
- 0 4% (17) were rearrested for intentionally or negligently killing someone

Child molesters were less likely to be rearrested for a property crime (10 6%, 456 of 4,295) than a violent crime (14 1%, 607 of 4,295)

Of the 443 statutory rapists released in 1994 —

- 49 9% (221) were rearrested for some new crime
- 0 7% (3) were rearrested for homicide
- 22 6% (100) were rearrested for a property crime
- 21 2% (94) were rearrested for a violent crime

Table 42. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by charge at rearrest

Rearrest charge	Percent rearrested for specified offense within 3 years: Child molesters	Statutory rapists
All charges[a]	39 4%	49 9%
Violent offenses[b]	14 1%	21.2%
Homicide[c]	0 4	0 7
Sex offense[d]	5 1	5 0
Rape	1 3	1 6
Sexual assault	4 4	3 6
Robbery	1 7	4 3
Assault	7 1	12 6
Property offenses[e]	10 6%	22 6%
Burglary	2 8	4 3
Larceny/theft	4 6	10 8
Motor vehicle theft	1 5	3 8
Fraud	1 9	3 6
Drug offenses[f]	8 6%	12 0%
Public-order offenses[g]	20 0%	27 1%
Other offenses	7 8%	4 3%
Total released	4,295	443

Note The 4,295 child molesters were released in 15 States, the 443 statutory rapists in 11 States Because of overlapping definitions, all statutory rapists also appear under the column "child molesters " Detail may not add to totals because of rounding

[a]All offenses include any offense type listed in footnotes *b* through *f* plus "other" and "unknown" offenses

[b]Total violent offenses include homicide, kidnaping, rape, other sexual assault, robbery, assaults, and other violence

[c]Homicide includes murder, voluntary manslaughter, vehicular manslaughter, negligent manslaughter, nonnegligent manslaughter, unspecified manslaughter, and unspecified homicide

[d]Includes both rape and sexual assault.

[e]Total property offenses include burglary, larceny, motor vehicle theft, fraud, forgery, embezzlement, arson, stolen property, and other forms of property offenses

[f]Drug offenses include drug trafficking, drug possession, and other forms of drug offenses

[g]Public-order offenses include traffic offenses, weapon offenses, probation and parole violations, court-related offenses, disorderly conduct, and other such offenses

Survey of State inmates

The 9,691 prisoners in this study were all men sentenced to prison for sex crimes Characteristics of the victims of these sex crimes were largely unavailable for the study. For information on imprisoned sex offenders and their victims, data were drawn from a survey covering the approximately 73,000 male sex offenders in State prisons nationwide in 1997

Of the 73,000 victims of their sex crimes —
- about 90% were female
- nearly 75% were white
- 89% were non-Hispanic
- 36% were below age 13
- altogether, 70% were under age 18

Child victims of sex crimes were more likely than adult victims to be male (11% versus 3%). Whites made up 76% of child victims and 66% of adult victims

The biggest difference between child victims and adult victims was their relationship to the man who committed the sex crime:

Among cases where the victim was under 18, the boy or girl was the prisoner's own child (16%), stepchild (16%), sibling or stepsibling (2%), or other relative (13%) in nearly half of all child victim cases (46%). Among cases where the victim was an adult, the victim was a relative less often (11%)

Among inmates who were in prison for a sex crime against a child, the child was the prisoner's own child or stepchild in a third of the cases. Seven percent of the inmates reported their child victims to have been strangers Among adult victims, 34% were strangers to their attacker

Characteristics of victims of rape or sexual assault, for which male inmates were serving a sentence in State prisons, 1997

	Percent of victims of rape or sexual assault		
		Victim age	
Victim characteristic	All	18 years or older	Under 18 years
Total	100%	100%	100%
Gender			
Male	8 8%	2 8%	11 1%
Female	91.2	97.2	88 9
Race			
White	73.2%	66 0%	76 4%
Black	22 8	30.2	19 4
Other	4 0	3 8	4 2
Hispanic origin			
Hispanic	11 3%	9 9%	12 1%
Non-Hispanic	88 7	90 1	87 9
Age			
12 or under	36 4%	--	51.6%
13-17	34 1	--	48 4
18-24	10.8	36 7%	--
25-34	11.2	37 9	--
35-34	7 0	23 8	--
55 or over	0 5	1 6	--
Victim was the prisoner's —			
Spouse	1 1%	3 8%	0%
Ex-spouse	0 6	2 0	0
Parent/stepparent	0 6	0 4	0 6
Own child	11.5	1 4	15 7
Stepchild	11.2	0 4	15.8
Sibling/stepsibling	1 3	0 4	1 7
Other relative	9 4	2 1	12 7
Boy/girlfriend	5 5	8 2	4 4
Ex-boy/girlfriend	1 1	2 0	0 8
Friend/ex-friend	22 7	24 8	22 0
Acquaintance/other	19 4	20 1	19 6
Stranger	15 6	34 4	6 7
Total estimated number	73,116	20,958	50,027

Note Data are from the BJS Survey of Inmates in State Correctional Facilities, 1997 This table is based on 73,116 prisoners who reported having one victim in the crime for which they were sentenced to prison (They accounted for approximately 84% of all incarcerated male sex offenders in 1997) Data identifying victim's sex were reported for 99.8% of the 73,116 males incarcerated for sex crimes, victim's race were reported for 98 9%, Hispanic origin for 98 2%, victim's age for 97 1%, victim's relationship to prisoner for 98 3% Detail may not sum to total due to missing data for age of victim.
--Not applicable

3-year followup period

For analytic purposes, "3 years" was defined as 1,096 days from the day of release from prison. Any rearrest, reconviction, or re-imprisonment occurring after 1,096 days from the 1994 release was not included. A conviction after 1,096 days was not counted even if it resulted from an arrest within the period.

Separating sex offenders into four types

The report gives statistics for four types of sex offenders. Separating sex offenders into the four types was done using information — in particular, the statute number for the imprisonment offense, the literal version of the statute, a numeric FBI code (called the "NCIC" code, short for "National Crime Information Center") indicating what the imprisonment offense was, and miscellaneous other information — available in the prison records on the 9,691 men. However, the prison records obtained for the study did not always contain all four pieces of information on the imprisonment offense. Moreover, the available offense information was not always detailed enough to reliably distinguish different types of sex offenders.

The process of sorting sex offenders into different types involved first creating the study's definitions of the four types, and then determining which State statute numbers, which literal versions of those statutes, and which NCIC codes conformed to the definitions. Each inmate was next classified into one of the types (or possibly into more than one type, since the four are not mutually exclusive) depending on whether the imprisonment offense information available on him fit the study's definition.

An obstacle to classifying sex offenders into types was that the labels "rape," "sexual assault," "child molestation," "statutory rape" were not widely used in State statutes, and when they were used they did not always conform to the study's definitions of them. In deciding which type of sex offender to classify the prisoner as, importance was attached not to the label the law gave to his conviction offense, but to how well the law's definition of the offense fit the study's definition of the type.

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At various places, this report compares 9,691 released male sex offenders to 262,420 released non-sex offenders. While labeled "non-sex offenders," the 262,420 actually includes a small number- 87- who are sex offenders. The 87 are all the female sex offenders released from prisons in the 15 States in 1994.

Ages of molested and allegedly molested children

Information on the ages of molested children was needed for two calculations: 1) age of the child the released sex offender was sent to prison for molesting, and 2) age of the child allegedly molested by the released sex offender during the 3-year follow-up period. The most frequent source of both was a sex statute: either the sex statute the offender was imprisoned for violating, or the statute the released prisoner was charged with violating when he was rearrested for a sex crime. The former was obtained from the prison records assembled for the study; the latter, from the assembled arrest records.

None of the sex statutes was found to apply to a victim of a specific age; for example, just to 12-year-olds. But some were found to apply just to children in a certain age range; for example, under 12, or 13 to 15, or 16 to 17. While specific ages of children could not be obtained from statutes, the availability of information on age ranges at least made it possible to obtain approximate ages. The rule that was adopted was to record the victim's (or alleged victim's) age as the upper limit of a statute's age range. To illustrate, a statute might indicate that the complainant/victim be "at least 13 but less than 16 years of age." In that case, the age of the child was recorded as 15, since the statute indicated the upper limit of the age range as any age "less than 16." As another example, if a statute indicated the complainant/victim be "under 12 years of age," the child's age was recorded as 11, as the phrasing of the age range did not include 12-year-olds, only those "under 12." Because the victim (or alleged victim) was always assigned the age of the oldest person in the age range, the study made the victims (or alleged victims) appear older than they actually were.

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In many instances, the data needed to calculate a statistic were not available for all 9,691 released sex offenders. For example, the 9,691 were released in 15 States, but data needed to determine the number reconvicted were only available for the 9,085 released in 14 of the 15. Of the 9,085, 2,180 (24%) were reconvicted. When data were missing, the statistic was computed on those

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Because of missing information, the study was unable to determine how many inmates released from New York prisons were rearrested outside of New York The study was able to document how many prisoners released in the other 14 States were rearrested outside the State that released them Because of incomplete New York data, the report's recidivism rates are somewhat deflated

Missing data on rearrest for a sex crime

According to arrest records compiled in the study, 4,163 of the 9,691 released sex offenders were rearrested for a new crime of some kind It was not always possible to determine from these records whether the new crime was a sex crime For 202 rearrested prisoners, the arrest record did not identify the type of crime For the rest the record did identify the type but the offense label was not always specific enough to distinguish sex crimes from other crimes For example, if the label said "contributing to the delinquency of a minor," "indeceny," "morals offense," "family offense," or "child abuse," the offense was coded as a non-sex crime even though, in some unknown number of cases, it was actually a sex crime

According to arrest records, 5 3% of the 9,691 (517 out of 9,691) released sex offenders were rearrested for another sex crime For the two reasons described immediately above, 5 3% was probably an undercount of how many were rearrested for a sex crime How much of an undercount could not be firmly determined from the data assembled for the study However, a conservative measure of the size of the undercount was obtained from the data The study database included 121 rearrested sex offenders whose arrest record did not indicate they were rearrested for a sex crime (the rearrest was either for a non-sex crime or for an unknown type of crime) but whose court record did indicate they were charged with a sex crime When the study calculated the percentage rearrested for a sex crime, the 121 were not included among the 517 with a rearrest for a sex crime Had the 121 been included in the calculation of the rearrest rate, the total number rearrested for a sex crime would have been 638 rather than 517, and the percentage rearrested for a sex crime would have been 6 6% rather than 5 3% This suggests an undercount of about 1 percentage point

Texas prisoners classified as "other type of release"

Texas released 692 male sex offenders in 1994, of which 129 were classified as release category "17", defined as "other type of release " Numerous data quality checks were run on the 129 and the 64 of them who were rearrested The rearrest rate for the 129 was about average for Texas releases But numerous anomalies were found for the 64 who were rearrested

1 The rearrest offense for the 64 was always missing from their arrest record
2 The date of rearrest for the 64 was always the same as their release date
3 Virtually all 64 were reconvicted for a sex crime
4 The sentence length imposed for their new sex crime was identical to the sentence they were serving when released in 1994

Because of these anomalies, the 129 were excluded from the calculation of "percent reconvicted for a sex crime "

Counting rules

In this report, rearrest was measured by counting the number of different persons who were rearrested at least once A released prisoner who was rearrested several times or had multiple rearrest charges filed against him was counted as only one rearrested person The same counting rule applied to reconviction and the other recidivism measures

If a released prisoner was rearrested several times, his earliest rearrest was used to calculate his time-to-rearrest The same counting rule applied to reconviction and recidivism defined as a new prison sentence

If a released prisoner had both in-State and out-of-State rearrests, he was counted as having an out-of-State rearrest regardless of whether the out-of-State rearrest was his earliest rearrest The same rule applied in cases where the released prisoner had both felony and misdemeanor rearrests, or both sex crime and non-sex crime rearrests The person was counted as having a felony rearrest or a sex crime rearrest regardless of temporal sequence

The aim of these rules was to count people, not events The only tables in the report that do not follow the rule are tables 41 and 42

First release

All 15 States had first releases, but they could not be identified in 1 State (Ohio) They could be identified in Michigan, but Michigan data on sentence length did not fit the study's definition Since sentence length was critical to several statistics calculated

from data on first releases (for example, percent of sentence served), Michigan was excluded from all tables based on first releases.

Analysis of statutory rape laws

The publication's analysis of statutory rape laws in the United States benefitted greatly from the report "Sexual Relationships Between Adult Males and Young Teen Girls: Exploring the Legal and Social Responses," by Sharon G. Elstein and Noy Davis, American Bar Association, Center on Children and the Law, October 1997.

Sampling error

In 1994 State prisons in 15 States released 302,309 prisoners altogether. A total of 38,624 were sampled for a recidivism study. Results of that study and information regarding sampling and other methodological details are available in the BJS publication *Recidivism of Prisoners Released in 1994*, NCJ 193427, June 2002.

The 302,309 total released consisted of 10,546 released sex offenders plus 291,763 released non-sex offenders. The 38,624 sample consisted of 10,546 released sex offenders plus 28,078 released non-sex offenders. The number of sex offenders in the sample was the same as the number in the 302,309 total because all sex offenders released in 1994 in the 15 States were selected for the study, not a sample of them.

Because no sampling was used to select sex offenders, numbers and percentages in this report for sex offenders were not subject to sampling error. However, comparisons in the report between sex offenders and non-sex offenders were subject to sampling error because sampling was used to select non-sex offenders. Where sex offenders were compared to all non-sex offenders released in 1994, sampling error was taken into account. All differences discussed were statistically significant at the .05 level.

Not all 10,546 sex offenders in the sample were used in the report. To be in the report, the sex offender had to be male and meet all 4 of the following criteria:

1. A RAP sheet on the prisoner was found in the State criminal history repository.
2. The released prisoner was alive throughout the entire 3-year followup period. (This requirement resulted in 21 sex offenders' being excluded.)
3. The prisoner's sentence was greater than 1 year (missing sentences were treated as greater than 1 year).
4. The State department of corrections that released the prisoner in 1994 did not designate him as any of the following release types: release to custody/detainer/warrant, absent without leave, escape, transfer, administrative release, or release on appeal.

A total of 9,691 released male sex offenders met the selection criteria. The number of them released in each State is shown in the appendix table.

Other methodological details

To help the reader understand the percentages provided in the report, both the numerator and denominator were often given. In most cases, the reader could then reproduce the percentages. For example, the report indicates 38.6% (3,741) of the 9,691 sex offenders were returned to prison.

Appendix table. Number of sex offenders released from State prisons in 1994 and number selected for this report, by State

State	Sex offenders released from prison in 1994	
	Total	Selected to be in this report
Total	10,546	9,691
Arizona	156	122
California	3,503	3,395
Delaware	53	45
Florida	1,053	965
Illinois	775	710
Maryland	277	243
Michigan	477	444
Minnesota	249	239
New Jersey	449	429
New York	799	692
North Carolina	508	441
Ohio	824	606
Oregon	452	408
Texas	708	692
Virginia	263	260

Note: "Total released" includes both male and female sex offenders; "Total selected to be in this report" includes only male sex offenders.

Using the 3,741 and the 9,691, the reader could exactly reproduce the results. However, the reader should be aware that in a few places, the calculated percentages will differ slightly from the percentages found in the report. This is due to rounding. For example, 43.0%, or 4,163, of the 9,691 sex offenders were rearrested; however, 4,163 / 9,691 is 42.96%, which was rounded to 43.0%.

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3-year followup period

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The report gives statistics for four types of sex offenders Separating sex offenders into the four types was done using information — in particular, the statute number for the imprisonment offense, the literal version of the statute, a numeric FBI code (called the "NCIC" code, short for "National Crime Information Center") indicating what the imprisonment offense was, and miscellaneous other information — available in the prison records on the 9,691 men However, the prison records obtained for the study did not always contain all four pieces of information on the imprisonment offense. Moreover, the available offense information was not always detailed enough to reliably distinguish different types of sex offenders.

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An obstacle to classifying sex offenders into types was that the labels "rape," "sexual assault," "child molestation," "statutory rape" were not widely used in State statutes, and when they were used they did not always conform to the study's definitions of them In deciding which type of sex offender to classify the prisoner as, importance was attached not to the label the law gave to his conviction offense, but to how well the law's definition of the offense fit the study's definition of the type

Sex offenders compared to non-sex offenders

In 1994, prisons in 15 States released 272,111 prisoners, representing two-thirds of all prisoners released in the United States that year. Among the 272,111 were 262,420 released prisoners whose imprisonment offense was not a sex offense Non-sex offenders include inmates, both male and female, who were in prison for violent crimes (such as murder or robbery), property crimes (such as burglary or motor vehicle theft), drug crimes, and public order offenses. Like the 9,691 male sex offenders examined in this report, all non-sex offenders were serving prison terms of one year or more in State prison when they were released in 1994.

At various places, this report compares 9,691 released male sex offenders to 262,420 released non-sex offenders While labeled "non-sex offenders," the 262,420 actually includes a small number- 87- who are sex offenders The 87 are all the female sex offenders released from prisons in the 15 States in 1994

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Information on the ages of molested children was needed for two calculations 1) age of the child the released sex offender was sent to prison for molesting, and 2) age of the child allegedly molested by the released sex offender during the 3-year follow-up period The most frequent source of both was a sex statute either the sex statute the offender was imprisoned for violating, or the statute the released prisoner was charged with violating when he was rearrested for a sex crime The former was obtained from the prison records assembled for the study, the latter, from the assembled arrest records

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A total of 9,691 released male sex offenders met the selection criteria The number of them released in each State is shown in the appendix table

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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

SPECIAL REPORT

MAY 2019

NCJ 251773

Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14)

Mariel Alper, Ph.D., and Matthew R. Durose, *BJS Statisticians*

Among persons released from state prisons in 2005 across 30 states after serving a sentence for rape or sexual assault, 8% were arrested for rape or sexual assault during the 9 years after their release. Overall, 67% of sex offenders released in 2005 were arrested at least once for any type of crime during the 9-year follow-up period.[1]

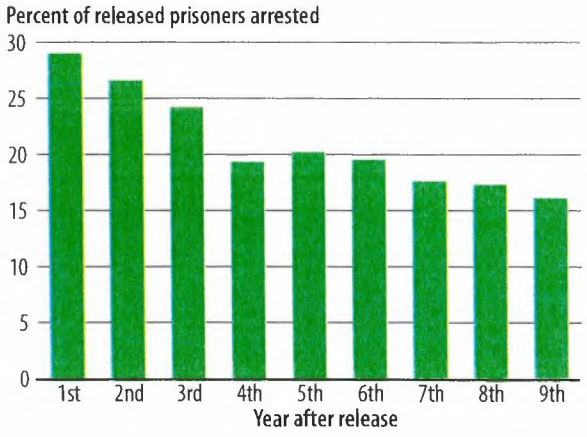
About 3 in 10 (29%) sex offenders released in 2005 were arrested during their first year after release (figure 1). About 1 in 5 (20%) were arrested during their fifth year after release, and nearly 1 in 6 (16%) were arrested during their ninth year.

The Bureau of Justice Statistics (BJS) used criminal-history data and prisoner records to analyze the post-release offending patterns of former prisoners both within and outside of the state where they were imprisoned. This is BJS's first recidivism study on sex offenders with a 9-year follow-up period.

[1]For this report, "sex offenders" refers to released prisoners whose most serious commitment offense was rape or sexual assault.

FIGURE 1

Annual arrest percentage of prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault



Note: The denominator is the 20,195 prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault. See table 7 for estimates and appendix table 9 for standard errors.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

HIGHLIGHTS

Within 9 years of their release from prison in 2005—

- Rape and sexual assault offenders were less likely than other released prisoners to be arrested, but they were more likely than other released prisoners to be arrested for rape or sexual assault.
- Released sex offenders were more than three times as likely as other released prisoners to be arrested for rape or sexual assault (7.7% versus 2.3%).
- About two-thirds (67%) of released sex offenders were arrested for any crime, compared to about five-sixths (84%) of other released prisoners.
- Half of released sex offenders had a subsequent arrest that led to a conviction.
- Released sex offenders accounted for 5% of releases in 2005 and 16% of arrests for rape or sexual assault during the 9-year follow-up period.
- Less than half of released sex offenders were arrested for any crime within the first 3 years, while more than two-thirds were arrested within 9 years.
- Eleven percent of released sex offenders were arrested at least once for any crime outside the state of release.
- Among released prisoners who had a prior arrest for a sex offense but were serving time for an offense other than a sex offense, 6.7% were subsequently arrested for rape or sexual assault.

This study compares released prisoners whose most serious commitment offense was rape or sexual assault to all other released prisoners, in terms of their characteristics and recidivism patterns. It also compares the characteristics and recidivism patterns of released sex offenders to those of released prisoners whose most serious commitment offense was assault.

Prisoners whose most serious commitment offense was a violent crime of rape, sexual assault, or assault (whether aggravated or simple) were involved in a generally nonfatal attack upon a person, whereas homicide involves a fatality, and robbery involves an attack with the aim of taking property. So, in addition to comparisons with other released prisoners as a whole, this report examines how the recidivism patterns of sex offenders compare to the recidivism patterns of prisoners released after serving time for a non-sexual assault. (See Methodology for offense definitions.)

Separate recidivism rates for prisoners released after serving time for rape or sexual assault against a child were unavailable because a large number of prison records did not distinguish between crimes against children and crimes against adults. Prisoners released after serving time for rape or sexual assault against a child are included with all other rape and sexual assault offenders. Released prisoners whose most serious commitment offense was a non-violent sex offense, such as prostitution or pornography, are included with public-order offenders.

This study was based on a sample of 67,966 released prisoners who were randomly sampled to represent the 401,288 state prisoners released in 30 states in 2005. These 30 states were responsible for 77% of all persons released from state prisons nationwide. (See map on page 15.) A total of 358,398 male prisoners and 42,890 female prisoners were released in the study's 30 states in 2005. These persons may have been serving time for more than one offense and were categorized by the offense with the longest maximum sentence. For instance, prisoners released after serving time for homicide and rape or sexual assault were categorized as homicide offenders if the sentence length for the homicide was longer.

Males accounted for 19,871 (98%) of the 20,195 prisoners released after serving time for rape or sexual assault in 2005 in the study's 30 states (table 1). This report examines the recidivism rates of male and female sex offenders separately in tables 10 to 13.

TABLE 1

Characteristics of prisoners released in 30 states in 2005, by most serious commitment offense

Characteristic	All prisoners	Most serious commitment offense: Rape/ sexual assault	Assault	Offense other than rape/ sexual assault
Sex				
Male	89.3%	98.4%	93.0%	88.8%
Female	10.7	1.6	7.0	11.2
Race/Hispanic origin				
White[a]	39.7%	52.1%	36.1%	39.1%
Black/African American[a]	40.1	27.2	38.0	40.8
Hispanic/Latino	17.7	17.2	22.5	17.7
Other[a,b]	2.4	3.5	3.4	2.4
Age at release				
24 or younger	17.7%	12.3%	19.4%	18.0%
25–29	19.4	15.9	21.3	19.6
30–34	16.0	14.1	17.1	16.1
35–39	15.7	14.0	14.9	15.8
40 or older	31.2	43.8	27.3	30.6
Median	34 yrs.	38 yrs.	32 yrs.	34 yrs.
Mean	35.0	38.8	34.0	34.8
Type of prison release				
Conditional	74.1%	67.9%	75.3%	74.4%
Unconditional	25.9	32.1	24.7	25.6
Maximum sentence length[c]				
1–<2 years	19.2%	10.5%	12.9%	19.6%
2–<5 years	44.7	34.2	56.3	45.3
5–<10 years	22.1	28.0	20.4	21.8
10 years or more	14.0	27.3	10.4	13.3
Median	36 mos.	60 mos.	36 mos.	36 mos.
Number of prior arrests per released prisoner[d]				
4 or fewer	24.8%	52.4%	25.0%	23.4%
5–9	30.3	26.6	30.2	30.5
10 or more	44.9	21.0	44.8	46.2
Median	9 arsts.	4 arsts.	9 arsts.	9 arsts.
Mean	11.0	6.3	10.8	11.3
At least one prior arrest for—				
Drug offense	70.7%	30.5%	57.9%	72.8%
Property offense	81.3	55.8	78.0	82.6
Number of released prisoners	401,288	20,195	38,468	381,093

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. Percentages exclude missing data. Data on prisoners' age at release were reported for 100% of cases; race/Hispanic origin, for 99.86%; type of prison release, for 98.19%; and maximum sentence length, for 99.72%. See appendix table 3 for standard errors.

[a]Excludes persons of Hispanic/Latino origin (e.g., "white" refers to non-Hispanic whites and "black" refers to non-Hispanic blacks).

[b]Includes Asians, Native Hawaiians, and Other Pacific Islanders; American Indians and Alaska Natives; and persons of two or more races.

[c]Based on the released prisoners' total maximum sentence length for all commitment offenses. Study excludes prisoners sentenced to less than one year.

[d]Includes arrests for any type of crime prior to the prisoners' date of release in 2005.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

Sex offenders were more likely than other released prisoners to receive longer sentences and to be granted unconditional releases

Rape or sexual assault was the most serious commitment offense for 5% of the 401,288 prisoners released in 30 states in 2005. (See appendix table 1.) In comparison, assault was the most serious commitment offense of 10% (38,468) of released prisoners.

The median sentence length among prisoners released in 30 states in 2005 after serving time for rape or sexual assault (60 months) was longer than the median sentence length among all prisoners (36 months) or prisoners released after serving time for assault (36 months). Twenty-seven percent of prisoners released after serving time for rape or sexual assault were serving a maximum sentence length of 10 years or more, compared to 10% of prisoners released after serving time for assault.

Sex offenders were more likely to be given unconditional releases than other offenders. About 1 in 3 (32%) sex offenders were granted an unconditional release and not placed on parole, probation, or some other form of community supervision, compared to about 1 in 4 (26%) offenders overall and 1 in 4 (25%) assault offenders. Among prisoners who were granted an unconditional release, 96% were released for an expiration of sentence, and the remaining 4% were commutations or other types of unconditional releases (not shown in tables).

The median age at release for sex offenders was 38

The demographic composition of prisoners released after serving time for rape or sexual assault differed from those released after serving time for other offenses. About half (52%) of sex offenders were white, compared to 36% of assault offenders and 40% of all offenders.

Criminal-history data were used to measure recidivism outcomes of former prisoners

This study uses several measures to examine the post-release offending patterns of former state prisoners, including new arrests and returns to prison. The recidivism patterns were examined in terms of post-release arrests for any type of offense and for the same type of offense for which the former prisoner had been serving time. These estimates do not include crimes that were not reported to the police or that did not result in an arrest.

Prisoners released in 2005 may not have been able to commit certain types of crimes for a portion of the 9-year period following their release because they were re-incarcerated. Data on the amount of time that the prisoners released in 30 states in 2005 spent in prison or jail during the 9-year follow-up period were not available for this study. The recidivism estimates include offenses that the released prisoners were charged with while incarcerated during the follow-up period.

The *cumulative arrest percentage* is the percentage of former prisoners who were arrested at least once during the follow-up period. For example, the cumulative arrest percentage for year-3 is the percentage of prisoners who had at least one arrest during the first, second, or third years following their release. This report also examines the cumulative percentage of prisoners who had a subsequent arrest that led to a court conviction and the cumulative percentage who returned to prison following release. Because not all arrests result in a conviction or reimprisonment, recidivism rates based on these measures are lower than those based on an arrest.

The *annual arrest percentage* is the percentage of released prisoners who were arrested at least once during a particular year within the follow-up period. The denominator for each percentage from years 1 through 9 is the total number of prisoners released in the 30 states during 2005. The numerator is the number of former prisoners arrested during the particular year, regardless of whether they had been arrested during a prior year.

The *annual percentage of first arrests* is the percentage of prisoners who had their first arrest following release during a specific year during the follow-up period. The denominator for each annual first-arrest percentage from years 1 through 9 is the total number of prisoners released in the 30 states in 2005. The numerator is the number of former prisoners arrested for the first time during each of those years (i.e., they had not been arrested during a prior year during the follow-up period). The sum of the annual first-arrest percentages during a follow-up period equals the cumulative arrest percentage for the same period.

The *volume of arrest offenses* is the total number of arrest offenses among the released prisoners during the follow-up period. A former prisoner may have had multiple arrests during the follow-up period, and a single arrest may have involved charges for more than one crime.

The median age at the time of release was older for sex offenders (age 38) than for all released prisoners (age 34) and for assault offenders (age 34). Forty-four percent of sex offenders were age 40 or older at release, compared to 27% of assault offenders and 31% of all offenders.

About half of sex offenders had 5 or more prior arrests and about a third had at least 1 prior drug arrest

About half (52%) of prisoners released after serving a sentence for rape or sexual assault had four or fewer arrests for any type of crime in their criminal history prior to their release in 2005, and about half (48%) had five or more prior arrests. On average, sex offenders had fewer prior arrests in their criminal history than assault offenders. The median number of prior arrests among sex offenders was four, compared to nine for assault offenders. Prior to their release, 31% of sex offenders had been arrested at least once for a drug offense and 56% for a property offense.

Sex offenders were less likely than other released prisoners to be arrested during the 9 years following release

An estimated 83% of the 401,288 prisoners released in 30 states in 2005 were arrested for a new crime within 9 years of release (table 2). The percentage of released prisoners arrested within 9 years for any type of crime after serving time for rape or sexual assault was 67%. That was higher than for prisoners released after serving time for homicide (60%) and lower than for prisoners released after serving time for robbery (84%) or assault (83%). Sex offenders (67%) were also less likely to be arrested following release than prisoners released after serving time for property (88%), drug (84%), or public-order (82%) offenses. Among released prisoners who were arrested during the 9-year follow-up period, 96% of sex offenders and 99% of all offenders were arrested for an offense other than a probation or parole violation (not shown in tables).

Among all 401,288 prisoners released in 30 states in 2005, 381,093 (95%) were serving time for offenses other than rape or sexual assault (i.e., their most serious commitment offense was not a violent sex offense). An estimated 84% of prisoners released after serving time for an offense other than rape or sexual assault were arrested for any type of offense during the 9-year follow-up period.

TABLE 2

Percent of prisoners released in 30 states in 2005 who were arrested within 9 years following release, by most serious commitment offense and types of post-release arrest charges

	Post-release arrest offense								
		Violent							
Most serious commitment offense	Any offense	Total violent[a]	Homicide	Rape/sexual assault	Robbery	Assault	Property	Drug	Public order
All prisoners	83.3%	39.1%	1.2%	2.6%	7.8%	31.3%	48.0%	48.0%	68.4%
Violent[a]	78.1%	43.4%	1.4%	4.0%	9.2%	34.1%	39.6%	36.7%	65.0%
Homicide	60.0	29.5	2.7	1.9	4.3	23.1	24.4	26.1	45.8
Rape/sexual assault	66.9	28.1	0.2	7.7	3.8	18.7	24.2	18.5	58.9
Robbery	84.1	47.2	1.5	3.4	16.8	34.3	47.7	45.3	67.1
Assault	82.9	50.7	1.4	2.8	7.7	44.2	44.3	43.2	69.6
Property	87.8%	40.3%	1.0%	2.5%	9.1%	31.9%	63.5%	48.4%	72.4%
Drug	83.7%	34.0%	1.1%	1.6%	5.8%	28.0%	42.4%	60.4%	66.9%
Public order	81.8%	39.8%	1.3%	2.4%	6.7%	32.5%	42.5%	38.8%	70.1%
Rape/sexual assault*	66.9%	28.1%	0.2%	7.7%	3.8%	18.7%	24.2%	18.5%	58.9%
Offense other than rape/ sexual assault[b]	84.1% †	39.6% †	1.2% †	2.3% †	8.0% †	31.9% †	49.2% †	49.6% †	68.9% †

Note: The numerator for each percentage is the number of persons arrested for that offense during the 9-year follow-up period, and the denominator is the number released after serving time for each type of commitment offense. Persons could have been in prison for more than one offense, the most serious of which is reported. Details may not sum to totals because a person may be arrested more than once for different types of offenses and each arrest may involve more than one offense. See appendix table 4 for standard errors.

*Comparison group.

†Difference with comparison group (rape/sexual assault) is significant at the 95% confidence level.

[a]Includes other miscellaneous violent offenses that are not shown separately.

[b]Includes the 381,093 prisoners whose most serious commitment offense was an offense other than rape or sexual assault.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

Sex offenders were three times as likely as other offenders to be arrested for rape or sexual assault during the 9 years following release

Among all prisoners released across 30 states in 2005, 2.6% were arrested for rape or sexual assault during the 9-year follow-up period. Among prisoners released after serving time for rape or sexual assault, 7.7% were arrested for rape or sexual assault within 9 years of release. Prisoners released after serving time for rape or sexual assault (7.7%) were more than twice as likely to be arrested for rape or sexual assault during the 9-year follow-up period than prisoners released after serving time for robbery (3.4%), assault (2.8%), or homicide (1.9%). Overall, prisoners released after serving time for rape or sexual assault (7.7%) were more than three times as likely as other released prisoners (2.3%) to be arrested for rape or sexual assault during the 9 years following release.

Sex offenders were more likely to be arrested for an assault or a drug, property, or public-order offense than for rape or sexual assault during the 9 years after release. During the 9-year follow-up period, approximately 1 in 5 (19%) sex offenders were arrested at least once for assault, 1 in 4 (24%) were arrested for a property offense, and 1 in 5 (18%) were arrested for a drug offense, while 1 in 13 (7.7%) were arrested for a rape or sexual assault. The majority (59%) of prisoners released after serving time for rape or sexual assault were arrested for a public-order offense within 9 years.

In addition to the 20,195 prisoners released in 30 states in 2005 after serving time for rape or sexual assault, other prisoners released that year had prior arrests for rape or sexual assault in their criminal-history records. Of the 381,093 prisoners released in 2005 after serving time for offenses other than rape or sexual assault, 25,948 (6.5%) had been arrested at least once for rape or sexual assault in their criminal history prior to being released in 2005 (not shown in tables).

Among the 25,948 prisoners released in 2005 whose most serious commitment offense was not rape or sexual assault but who had at least one prior arrest for rape or sexual assault, 6.7% were arrested for rape or sexual assault during the 9 years following release (not shown in tables). Of those prisoners released after serving time for offenses other than rape or sexual assault who had no prior arrests for rape or sexual assault, 2.0% were arrested for rape or sexual assault during the 9-year follow-up period.

Overall, a combined total of 46,144 prisoners released in 2005 either had been serving time for rape or sexual assault (20,195) or had been serving time for another type offense but had previously been arrested for rape or sexual assault (25,948). Of these 46,144 released prisoners, 7.2% were arrested for rape or sexual assault during the 9 years following release.

18% of sex offenders were arrested for the first time during years 4 through 9 after release

The cumulative arrest percentage among released sex offenders increased 18 percentage points when the follow-up period was extended from 3 to 9 years. About half (49%) of prisoners released after serving time for rape or sexual assault were arrested within 3 years, while 62% were arrested within 6 years (table 3). By the end of the 9-year follow-up period, the percentage

TABLE 3

Cumulative percent of prisoners released in 30 states in 2005 who were arrested following release, by year following release and most serious commitment offense

			Most serious commitment offense					
	All prisoners		Rape/sexual assault		Assault		Offense other than rape/sexual assault	
Year after release	Year of first arrest	Cumulative arrest percentage	Year of first arrest	Cumulative arrest percentage	Year of first arrest	Cumulative arrest percentage	Year of first arrest	Cumulative arrest percentage
1	43.8%	43.8%	29.0%	29.0%	43.2%	43.2%	44.5%	44.5%
2	16.2	60.0	12.9	41.9	16.2	59.4	16.4	60.9
3	8.3	68.3	7.0	48.9	8.5	67.9	8.4	69.3
4	5.1	73.4	4.9	53.8	5.6	73.5	5.2	74.4
5	3.5	76.9	4.4	58.2	4.1	77.5	3.5	77.9
6	2.3	79.3	3.6	61.8	2.1	79.6	2.3	80.2
7	1.7	80.9	2.0	63.8	1.5	81.2	1.7	81.8
8	1.3	82.3	1.9	65.7	1.1	82.3	1.3	83.1
9	1.0	83.3	1.2	66.9	0.7	82.9	1.0	84.1

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. See appendix table 5 for standard errors.
Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

of sex offenders arrested after release had increased to 67%. Released sex offenders were less likely (49%) than other released prisoners (69%) to be arrested within 3 years but more likely to be arrested for the first time in years 4 through 9 (18% versus 15%).

Among prisoners released after serving time for rape or sexual assault who were arrested during the 9-year follow-up period, 63% were arrested for the first time during the first 2 years. Among prisoners released after serving time for an offense other than rape or sexual assault who were arrested during the 9-year follow-up period, 72% were arrested for the first time during the first 2 years (not shown in tables).

Sex offenders had a lower cumulative arrest percentage than assault offenders. During year-1, 29% of sex offenders were arrested, compared to 43% of assault offenders. By the end of year-9, 67% of sex offenders had been arrested, compared to 83% of assault offenders.

As with released prisoners as a whole, the longer sex offenders went without being arrested after release, the less likely they were to be arrested during the 9-year follow-up period. While 13% of sex offenders were arrested following release for the first time in year-2, that constituted 18% of the 71% who were not arrested in year-1 (not shown in tables). For those not arrested by the end of year-2, 12% were arrested by the end of year-3. Nine percent of those not arrested in years 1 through 5 were arrested in year-6. In year-9, 4% of the released sex offenders who went 8 years without an arrest were arrested.

Half of prisoners released after serving time for rape or sexual assault had an arrest within 9 years that led to a conviction

This study also examines the percentage of prisoners who had an arrest during the 9 years following release that resulted in a conviction. This measure was based on prisoners released from the 29 states in the study (all but Louisiana) that had the necessary data. (See *Methodology*.)

Sex offenders were less likely than all prisoners released in 2005 to have had a new arrest that resulted in a conviction after release. During the first 3 years after release, 28% of prisoners released after serving time for rape or sexual assault had a new arrest that led to a conviction, compared to 49% of all prisoners (table 4). At the end of the 9-year follow-up period, 50% of prisoners released after serving time for rape or sexual assault had a new arrest that led to a conviction, compared to 69% of all prisoners.

The percentage of sex offenders who had an arrest that led to a conviction within 9 years of release (50%) was about three-quarters of the percentage of sex offenders who were arrested within 9 years of release (67%).

TABLE 4

Cumulative arrest percentage of prisoners released in 29 states in 2005 after serving a sentence for rape/sexual assault or assault who had an arrest that led to a conviction after release

		Most serious commitment offense	
Year after release	All prisoners	Rape/sexual assault	Assault
1	25.4%	12.8%	22.4%
2	39.6	22.3	37.7
3	49.0	28.4	46.4
4	55.3	34.2	53.5
5	59.8	38.5	58.3
6	63.1	42.2	62.1
7	65.7	45.2	65.1
8	67.8	48.1	67.7
9	69.2	49.6	68.8

Note: Estimates based on time from release to first arrest that led to a conviction among prisoners released in 29 of the study's 30 states (all but Louisiana). Persons could have been in prison for more than one offense, the most serious of which is reported. See appendix table 6 for standard errors.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

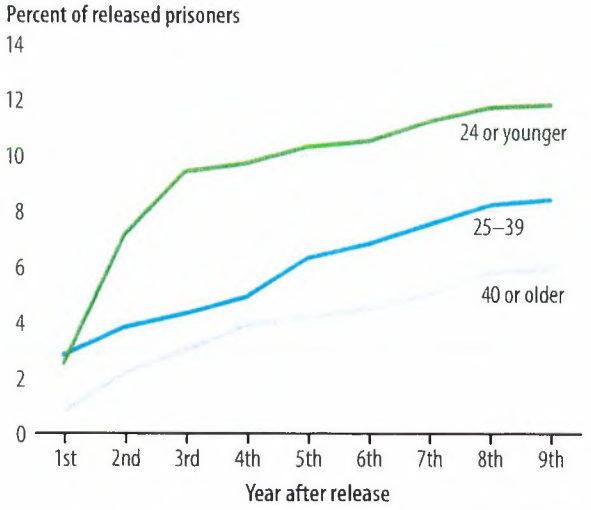
Younger sex offenders were more likely than older sex offenders to be arrested for another sex offense post-release

Overall, 4.4% of sex offenders were arrested for another sex offense within 3 years following release (table 5). After 9 years following release, the percentage rose to 7.7%. Younger sex offenders (those age 24 or younger at the time of release) were more likely to be arrested for rape or sexual assault following release than older sex offenders (age 40 or older at the time of release).

Nearly 10% (9.4%) of sex offenders age 24 or younger at the time of their release were arrested for rape or sexual assault within 3 years of release, compared to 3.0% of those age 40 or older (figure 2). About half of those age 24 or younger who were arrested within 3 years of release for rape or sexual assault were arrested in year-2 alone (4.6%). Overall, within 9 years of release, sex offenders age 24 or younger were twice as likely to be arrested for rape or sexual assault (11.8%) as sex offenders age 40 or older (5.9%).

FIGURE 2

Cumulative percent of prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault who were arrested for rape/sexual assault after release, by age and year after release



Note: Age groups are based on prisoners' age at time of release after serving a sentence for rape or sexual assault. See table 5 for estimates and appendix table 7 for standard errors.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

TABLE 5

Cumulative percent of prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault who were arrested for rape/sexual assault after release, by age and year after release

Most serious commitment offense	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
All prisoners	0.5%	0.9%	1.2%	1.5%	1.8%	2.0%	2.2%	2.4%	2.6%
Prisoners released after serving a sentence for rape/sexual assault	1.9	3.5	4.4	5.1	5.9	6.3	6.9	7.6	7.7%
Age at release									
24 or younger	2.5	7.1	9.4	9.7	10.3	10.5	11.2	11.7	11.8
25–39	2.8	3.8	4.3	4.9	6.3	6.8	7.5	8.2	8.4
40 or older	0.8	2.2	3.0	3.9	4.2	4.5	5.0	5.8	5.9
Race/Hispanic origin									
White[a]	1.6	2.6	3.2	3.9	4.6	5.1	5.5	5.8	6.2
Black/African American[a]	1.7	4.4	4.6	6.0	6.5	6.8	7.7	9.7	9.7
Hispanic/Latino	3.3	4.9	7.5	7.5	8.1	8.1	8.6	8.6	8.6
Other[a,b]	1.0	2.6	3.8	4.1	4.5	4.7	6.7	6.7	6.9

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. Data on prisoners' sex and age at release were known for 100% of cases, and race/Hispanic origin was known for 99.86%. See appendix table 7 for standard errors.

[a]Excludes persons of Hispanic/Latino origin (e.g., "white" refers to non-Hispanic whites and "black" refers to non-Hispanic blacks).

[b]Includes Asians, Native Hawaiians, and Other Pacific Islanders; American Indians and Alaska Natives; and persons of two or more races.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

Measuring recidivism as a return to prison

In addition to arrests, returns to prison are another measure that can be used when studying prisoner recidivism. The Bureau of Justice Statistics (BJS) relies on a combination of criminal-history records from the Federal Bureau of Investigation and state repositories, along with prisoner records obtained from state departments of corrections through the National Corrections Reporting Program (NCRP), to estimate the percentage of released state prisoners who returned to prison.

BJS published a report in 2014 on state prisoners released in 2005 that used a 5-year follow-up period to examine offending patterns based on other recidivating events, including a conviction and return to prison.[2] The return-to-prison analysis for that report was based on prisoners released from the 23 states that could provide the necessary data. (See *Methodology*.) BJS used the annual 2005-10 NCRP files to supplement the criminal-history records with information on released prisoners who returned to prison for a probation or parole violation or a sentence for a new crime.

When BJS extended the follow-up period from 5 to 9 years, only 17 states could provide the prison-admission data needed to identify returns to prison for the entire time frame. As a result, this report provides return-to-prison rates for only the first 5 years following release for the prisoners released in the 23 states with the necessary data. The 5-year return-to-prison rates of released sex offenders were not included in prior reports on prisoners released in 2005.

Prisoners released after serving time for rape or sexual assault had a lower 5-year return-to-prison rate than released prisoners overall. Among prisoners serving time for rape or sexual assault who were released in 2005 in the 23 states with available data on returns to prison, 35% had a parole or probation violation or an arrest for a new offense that led to imprisonment within 3 years, while 40% had one within 5 years. In comparison, 55% of all prisoners released in 2005 had a parole or probation violation or an arrest for a new offense that led to imprisonment within 5 years.

Due to limitations with the prison-admission data used for this study, it is not possible to distinguish between returns to prison for parole or probation violations and returns to prison for sentences for new crimes. It is also not possible to determine how many of the returns to prison were for rape or sexual assault (or other types of crimes).

[2] *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010,* NCJ 244205, BJS web, April 2014.

Within 3 years of release, sex offenders with 10 or more prior arrests for any crime (5.7%) were not statistically significantly more likely to be arrested for rape or sexual assault than those with 5 to 9 prior arrests (4.5%) and those with 4 or fewer prior arrests (3.7%) (not shown in tables). Within 9 years of release, sex offenders with 10 or more prior arrests for any crime (10.4%) were not statistically significantly more likely to be arrested for rape or sexual assault than those with 5 to 9 prior arrests (8.3%) and those with 4 or fewer prior arrests (6.4%) (not shown in tables).

11% of prisoners released after serving time for rape or sexual assault were arrested at least once outside the state that released them

Five percent of prisoners released after serving time for rape or sexual assault were arrested outside of the state that released them, for any type of crime, during the first 3 years after release (table 6). During years 4 through 9, the out-of-state cumulative arrest rate increased to 11%. Among prisoners released after serving time for assault, 8% were arrested in another state within 3 years and 17% were arrested within 9 years. Fewer than 1% of sex offenders were arrested in another state for rape or sexual assault during the 9 years following release (not shown in tables). Of the released sex offenders arrested for a new crime during the 9-year follow-up period, 17% had been arrested out-of-state and 83% had been arrested only within the state that released them (not shown in tables).

TABLE 6

Cumulative percent of prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault who were arrested outside the state of release, by year after release

		Most serious commitment offense	
Year after release	All prisoners	Rape/sexual assault	Assault
1	3.3%	2.1%	3.6%
2	5.7	3.4	6.4
3	7.7	5.2	8.4
4	9.3	6.7	10.2
5	10.8	8.2	11.9
6	12.1	9.4	13.1
7	13.3	10.1	14.4
8	14.4	10.6	15.6
9	15.4	11.4	16.7

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. See appendix table 8 for standard errors.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

Annual arrest percentages among sex offenders declined during the 9 years following their release

Overall, 84% of sex offenders who were age 24 or younger at release were arrested for any type of crime within 9 years after release, compared to 72% of those ages 25 to 39 and 57% of those age 40 or older (table 7). Twenty-nine percent of all sex offenders were arrested during their first year after release, compared to 16% during their ninth year. Among sex offenders who were age 24 or younger at release, the annual arrest percentage declined from 43% in year-1 to 19% in year-9. Roughly a third (33%) of sex offenders ages 25 to 39 were arrested during their first year after release, compared to about a sixth (17.5%) during their ninth year.

Thirty-five percent of sex offenders who were Hispanic were arrested in year-1, while the annual arrest rate declined by more than two-thirds to 11% in year-9. This decrease was larger than the decrease between years 1 and 9 for sex offenders who were white (from 24% to 13%) or who were black (from 35% to 26%).

TABLE 7

Annual arrest percentage of prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault, by prisoner characteristics

Characteristic	Number of released prisoners	Total arrested within 9 years	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
All prisoners	401,288	83.3%	43.8%	37.6%	34.2%	31.9%	30.0%	27.9%	27.2%	25.9%	24.0%
Prisoners released after serving a sentence for rape/sexual assault	20,195	66.9%	29.0%	26.6%	24.2%	19.3%	20.2%	19.5%	17.6%	17.3%	16.1%
Age at release											
24 or younger	2,486	83.8	42.9	37.5	29.7	21.2	26.9	21.9	25.5	27.5	18.7
25–39	8,867	72.0	32.7	30.4	27.5	21.7	23.1	22.5	19.3	17.5	17.5
40 or older	8,842	57.1	21.3	19.7	19.2	16.3	15.3	15.7	13.7	14.3	14.0
Race/Hispanic origin											
White[a]	10,499	61.3	23.8	22.0	20.1	16.7	16.4	17.2	14.0	15.9	12.8
Black/African American[a]	5,482	78.6	35.0	34.1	30.1	24.8	27.4	21.6	26.0	25.3	25.7
Hispanic/Latino	3,459	64.9	34.9	26.6	27.1	16.4	20.9	22.4	15.1	9.2	11.2
Other[a,b]	713	66.9	25.4	31.7	19.7	24.3	11.6	17.2	13.6	11.5	9.8
Prisoners released after serving a sentence for assault	38,468	82.9%	43.2%	38.1%	34.0%	32.4%	31.3%	29.0%	29.0%	28.4%	24.8%
Age at release											
24 or younger	7,468	87.3	50.9	43.5	35.4	31.0	35.5	29.1	25.8	29.1	27.4
25–39	20,511	85.2	44.1	39.1	36.1	33.8	32.2	30.0	32.1	30.8	26.7
40 or older	10,489	75.4	35.9	32.4	28.9	30.7	26.5	27.1	25.3	23.4	19.2
Race/Hispanic origin											
White[a]	13,841	80.3	38.8	34.5	32.5	29.7	30.9	29.7	27.5	26.6	23.1
Black/African American[a]	14,562	86.4	45.2	41.4	35.7	35.0	31.2	30.3	29.9	28.9	25.6
Hispanic/Latino	8,629	80.6	46.0	37.5	32.8	33.0	31.7	24.9	28.8	28.7	25.4
Other[a,b]	1,312	85.0	47.0	44.6	34.6	29.5	34.0	32.6	33.1	37.6	24.8

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. Percentages exclude missing data. Data on prisoners' age at release were reported for 100% of cases, and race/Hispanic origin was known for 99.86%. See appendix table 9 for standard errors.

[a]Excludes persons of Hispanic/Latino origin (e.g., "white" refers to non-Hispanic whites and "black" refers to non-Hispanic blacks).

[b]Includes Asians, Native Hawaiians, and Other Pacific Islanders; American Indians and Alaska Natives; and persons of two or more races.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

During the first year following release, 7% of sex offenders were arrested for a violent offense, 6% for a property offense, 4% for a drug offense, and 23% for a public-order offense (table 8). During the ninth year, these percentages fell to 3% each for a violent, property, or drug offense, and 13% for a public-order offense. During the 9 years after release, 28% of prisoners released after serving time for rape or sexual assault were arrested for a violent crime at least once, compared to 59% arrested for a public-order crime, 24% for a property crime, and 18% for a drug crime. Sex offenders were arrested for a violent offense less often than assault offenders during each year after release. This pattern was also observed for arrests for property, drug, and public-order offenses.

TABLE 8

Annual arrest percentage of prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault, by types of post-release arrest offenses

Most serious commitment offense and type of post-release arrest offense	Total arrested within 9 years	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Commitment offense: Rape or sexual assault										
Post-release arrest offense										
Violent	28.1%	6.6%	6.4%	5.3%	5.4%	5.3%	3.7%	4.1%	3.0%	2.6%
Property	24.2	5.7	5.7	4.7	4.0	4.7	3.8	4.2	4.5	3.1
Drug	18.5	4.2	4.5	3.8	1.9	3.3	3.0	3.1	3.1	3.3
Public order	58.9	23.4	20.9	19.5	15.3	14.7	14.7	13.9	13.4	13.0
Commitment offense: Assault										
Post-release arrest offense										
Violent	50.7%	12.9%	13.1%	10.4%	11.1%	11.6%	8.1%	8.6%	8.6%	7.5%
Property	44.3	12.5	10.7	11.1	8.8	7.9	8.0	8.7	8.9	8.3
Drug	43.2	11.5	12.1	7.8	9.2	8.7	8.1	8.7	9.0	8.0
Public order	69.6	30.9	25.1	23.2	22.4	20.0	19.3	19.2	19.6	16.3

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. See appendix table 10 for standard errors.
Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

Prisoners released after serving time for rape or sexual assault accounted for 16% of arrests for rape or sexual assault during the follow-up period

Prisoners released in 30 states in 2005 were arrested an estimated 2 million times during the 9 years after release. An arrest may involve charges for more than one offense. For instance, one arrest could include charges for a violent crime and a drug crime. These arrests included an estimated 2.9 million different types of offenses (table 9).

The majority of arrests for a specific type of crime did not involve those who had been in prison for the same type of offense. During the 9-year follow-up period, prisoners released after serving time for rape or sexual assault made up 16% of the approximately 12,000 arrests for rape or sexual assault that occurred among all prisoners released in 2005 in the study's 30 states. Prisoners released after serving time for other offenses accounted for the remaining 84% of the arrests for rape or sexual assault during the 9-year follow-up period. Although sex offenders accounted for 16% of the post-release arrests for rape or sexual assault, they represented 5% of all those released from prison in 30 states in 2005. (See appendix table 1.)

During the 9 years after release, prisoners released after serving time for assault made up 15% of the 232,000 arrests for assault, and prisoners released after serving time for other offenses accounted for the remaining 85% of the assault arrests. Prisoners released after serving time for assault accounted for 10% of all released prisoners.

TABLE 9

Types of offenses for which prisoners were arrested within 9 years following release in 30 states in 2005, by most serious commitment offense

		Most serious commitment offense								
			Violent							
Post-release arrest offense	Number of post-release arrest offenses	Total	Homicide	Rape/sexual assault	Robbery	Assault	Other violent	Property	Drug	Public order
Any offense	2,900,000	100%	0.9%	2.8%	6.6%	9.8%	1.9%	35.1%	31.8%	11.2%
Violent										
Total*	347,000	100%	1.3%	3.3%	8.8%	14.2%	2.8%	30.0%	26.5%	13.2%
Homicide	5,000	100%	4.5	1.2	8.2	10.6	5.4	27.6	28.1	14.5
Rape/sexual assault	12,000	100%	1.4	15.6	10.4	10.1	3.0	27.7	19.9	11.9
Robbery	40,000	100%	1.0	2.2	16.3	9.4	1.8	35.1	23.8	10.4
Assault	232,000	100%	1.3	2.7	7.5	15.5	2.6	29.9	27.1	13.6
Property	688,000	100%	0.7%	1.8%	7.0%	7.4%	1.5%	47.0%	24.6%	10.0%
Drug	673,000	100%	0.8%	1.5%	5.7%	7.7%	1.1%	29.4%	44.6%	9.2%
Public order	1,193,000	100%	1.0%	3.9%	6.1%	11.1%	2.3%	33.0%	30.3%	12.3%
Percent of all released prisoners		100%	1.9%	5.0%	7.2%	9.6%	2.1%	29.7%	31.9%	12.7%

Note: An arrest may involve charges for more than one type of offense. Each unique offense category included in an arrest is counted once. There were an estimated 1,990,000 post-release arrests of the 401,288 prisoners released in 30 states in 2005, and these included approximately 2,900,000 different offenses. Persons could have been in prison for more than one offense, the most serious of which is reported. Number of post-release arrest offenses for each sub-category was rounded to the nearest 1,000. See appendix table 11 for standard errors.

*Includes other miscellaneous violent offenses, not shown separately.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

Almost 6% of male prisoners released in 30 states in 2005 were serving time for rape or sexual assault

Rape or sexual assault was the most serious commitment offense for 5.5% (19,871) of the 358,398 male prisoners released in 30 states in 2005 (table 10). The median age at the time of release in 2005 was older for male sex offenders (age 38) than for all male prisoners released in the 30 states (age 34) and male assault offenders (age 32). Forty-four percent of male sex offenders were age 40 or older at release, compared to 27% of male assault offenders and 31% of all male offenders.

TABLE 10

Characteristics of male prisoners released in 30 states in 2005, by most serious commitment offense

Characteristic	All male prisoners	Most serious commitment offense		Offense other than rape/ sexual assault
		Rape/sexual assault	Assault	
Total	100%	100%	100%	100%
Race/Hispanic origin				
White[a]	38.4%	51.7%	36.1%	37.6%
Black/African American[a]	40.9	27.4	37.2	41.7
Hispanic/Latino	18.4	17.3	23.2	18.4
Other[a,b]	2.4	3.6	3.4	2.3
Age at release				
24 or younger	18.3%	12.3%	19.6%	18.7%
25–29	19.7	15.9	21.7	20.0
30–34	15.9	14.0	17.1	16.0
35–39	15.2	13.9	14.7	15.3
40 or older	30.8	44.0	26.9	30.1
Median	34 yrs.	38 yrs.	32 yrs.	34 yrs.
Mean	34.9	38.9	34.0	34.6
Type of prison release				
Conditional	74.3%	68.0%	76.0%	74.7%
Unconditional	25.7	32.0	24.0	25.3
Maximum sentence length[c]				
1–<2 years	18.1%	10.4%	12.4%	18.6%
2–<5 years	44.6	34.4	56.4	45.2
5–<10 years	22.5	27.8	20.5	22.2
10 years or more	14.7	27.4	10.7	14.0
Median	39 mos.	60 mos.	36 mos.	36 mos.
Number of prior arrests per released prisoner[d]				
4 or fewer	24.5%	52.0%	24.2%	22.8%
5–9	30.4	26.8	30.2	30.6
10 or more	45.2	21.2	45.6	46.6
Median	9 arsts.	4 arsts.	9 arsts.	9 arsts.
Mean	11.0	6.4	10.9	11.3
At least one prior arrest for—				
Drug offense	70.5%	30.6%	58.5%	72.9%
Property offense	81.2	56.1	78.6	82.7
Number of released prisoners	358,398	19,871	35,771	338,527

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. Percentages exclude missing data. Data on male prisoners' age at release were reported for 100% of cases; race/Hispanic origin, for 99.85%; type of prison release, for 98.21%; and maximum sentence length, for 99.72%. See appendix table 12 for standard errors.

[a]Excludes persons of Hispanic/Latino origin (e.g., "white" refers to non-Hispanic whites and "black" refers to non-Hispanic blacks).

[b]Includes Asians, Native Hawaiians, and Other Pacific Islanders; American Indians and Alaska Natives; and persons of two or more races.

[c]Based on the released prisoners' total maximum sentence length for all commitment offenses. Study excludes prisoners sentenced to less than one year.

[d]Includes arrests for any type of crime prior to the prisoners' date of release in 2005.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

Fewer than 1% of female prisoners released in 30 states in 2005 were serving time for rape or sexual assault

Fewer than 1% (324) of the 42,890 female prisoners released in 30 states in 2005 were serving time for rape or sexual assault (table 11). The median age at release for female sex offenders was 34, four years younger than the median age for male sex offenders. The median maximum sentence length for female sex offenders was 5 years, the same as for male sex offenders. Seventy-six percent of female sex offenders were white, compared to 52% of male sex offenders.

On average, female sex offenders had fewer prior arrests in their criminal history than male sex offenders. The median number of prior arrests among male sex offenders was four, compared to two for female sex offenders.

Nearly 8 in 10 (79%) female sex offenders had fewer than five arrests for any type of crime prior to their release in 2005, compared to about half (52%) of male sex offenders.

TABLE 11

Characteristics of female prisoners released in 30 states in 2005, by most serious commitment offense

Characteristic	All female prisoners	Most serious commitment offense	
		Rape/sexual assault	Assault
Total	100%	100%	100%
Race/Hispanic origin			
White[a]	51.0%	75.9%	35.5%
Black/African American[a]	33.9	14.3	47.9
Hispanic/Latino	12.3	8.6	13.0
Other[a,b]	2.9	1.2	3.6
Age at release			
24 or younger	12.0%	15.0%	17.2%
25–29	16.6	15.9	16.0
30–34	17.1	20.1	17.4
35–39	19.7	16.1	17.6
40 or older	34.6	32.8	31.8
Median	36 yrs.	34 yrs.	35 yrs.
Mean	36.0	35.7	34.8
Type of prison release			
Conditional	71.9%	62.7%	66.8%
Unconditional	28.1	37.3	33.2
Maximum sentence length[c]			
1–<2 years	27.8%	17.8%	19.8%
2–<5 years	45.8	21.6	55.2
5–<10 years	18.3	36.6	18.3
10 years or more	8.1	24.0	6.7
Median	36 mos.	60 mos.	36 mos.
Number of prior arrests per released prisoner[d]			
4 or fewer	28.0%	78.9%	35.5%
5–9	29.3	12.6	30.7
10 or more	42.7	8.5	33.8
Median	8 arsts.	2 arsts.	6 arsts.
Mean	10.8	3.8	9.0
At least one prior arrest for—			
Drug offense	72.0%	27.4%	49.8%
Property offense	81.8	36.4	69.8
Number of released prisoners	42,890	324	2,697

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. Percentages exclude missing data. Data on female prisoners' age at release were reported for 100% of cases; race/Hispanic origin, for 99.97%; and maximum sentence length, for 99.68%. See appendix table 13 for standard errors.

[a]Excludes persons of Hispanic/Latino origin (e.g., "white" refers to non-Hispanic whites and "black" refers to non-Hispanic blacks).

[b]Includes Asians, Native Hawaiians, and Other Pacific Islanders; American Indians and Alaska Natives; and persons of two or more races.

[c]Based on the released prisoners' total maximum sentence length for all commitment offenses. Study excludes prisoners sentenced to less than one year.

[d]Includes arrests for any type of crime prior to the prisoners' date of release in 2005.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

67% of male prisoners released after serving time for rape or sexual assault were arrested within 9 years

About half (49%) of male prisoners released after serving time for rape or sexual assault were arrested for any type of crime within 3 years, while 62% were arrested within 6 years (table 12). By the end of the 9-year follow-up period, the percentage of male sex offenders arrested after release had increased to 67%. At the end of the 9-year follow-up period, male sex offenders had a lower cumulative arrest percentage than all male prisoners (84%).

Four percent of male prisoners released after serving time for rape or sexual assault were arrested for rape or sexual assault within 3 years, while 8% were arrested for rape or sexual assault within 9 years (appendix table 18). Additional recidivism statistics on male sex offenders are available in appendix tables 16 to 22.

Among the 324 females released from state prisons after serving time for rape or sexual assault in 30 states in 2005, an estimated 29% were arrested for any type of crime at least once during the first year after release (table 13). Forty percent were arrested within 3 years of their release, while 50% were arrested within 6 years. By the end of the 9-year follow-up period, 54% of female sex offenders had been arrested after release. Female sex offenders had a lower 9-year cumulative arrest percentage than all female prisoners (77%). The sample of female sex offenders in this study included too few cases to provide reliable estimates on the percentage arrested for rape or sexual assault following release.

TABLE 12

Cumulative arrest percentage of male prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault who were arrested after release, by year after release

		Most serious commitment offense	
Year after release	All male prisoners	Rape/sexual assault	Assault
1	44.8%	29.0%	44.1%
2	61.1	42.0	60.3
3	69.4	49.1	68.9
4	74.4	53.9	74.5
5	77.9	58.4	78.5
6	80.2	62.0	80.6
7	81.8	64.0	82.1
8	83.1	65.9	83.1
9	84.0	67.1	83.8

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. See appendix table 14 for standard errors.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

TABLE 13

Cumulative arrest percentage of female prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault who were arrested after release, by year after release

		Most serious commitment offense	
Year after release	All female prisoners	Rape/sexual assault	Assault
1	35.1%	28.8%	31.5%
2	50.8	38.1	47.0
3	59.2	40.2	54.9
4	64.7	44.6	60.3
5	68.9	47.0	64.4
6	71.4	50.0	67.1
7	73.6	53.8	69.0
8	75.3	53.8	70.9
9	76.7	54.4	71.7

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. See appendix table 15 for standard errors.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

Methodology

Sampling

This study estimates the recidivism patterns of persons released in 2005 from state prisons in 30 states. States were included in this study if the state departments of corrections (DOCs) could provide the prisoner records and the Federal Bureau of Investigation (FBI) or state identification numbers on persons released from prison during 2005, through the National Corrections Reporting Program (NCRP), which is administered by the Bureau of Justice Statistics (BJS).

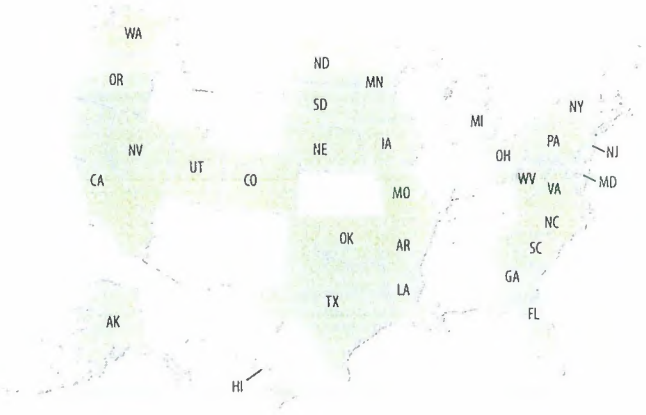
The fingerprint-based identification numbers were required to obtain the criminal-history records on released prisoners. Prisoner records also included each prisoner's sex, race, Hispanic origin, date of birth, confinement offenses, sentence length, type of prison release, and date of release. The 30 states with DOCs that submitted the NCRP data on prisoners released in 2005 were Alaska, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Iowa, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, and West Virginia (map 1).

Across the 30 states in 2005, a total of 412,731 prisoners were released and were eligible for this study. That number excludes 131,997 prisoners (for a total of 544,728) who were sentenced to less than one year, were transferred to the custody of another authority, died in prison, were released on bond, were released to seek or participate in an appeal of a case, or escaped from prison or were absent without official leave. When a prisoner was released multiple times during the year, the first release during 2005 was used.

From the universe of prisoners released in 30 states in 2005 in this study, all males and females who were in prison for homicide were selected with certainty into the study. Analyses were completed to determine the number of prisoners released after serving time for non-homicide offenses that would be needed from each state's universe of released prisoners to yield a statistically sound estimate of that state's recidivism rates.

MAP 1

States included in the BJS recidivism study of prisoners released in 2005



Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

As a result, states contributed different numbers of records to the final sample. To achieve the desired state-level samples, lists of all males and females imprisoned for a non-homicide offense were sorted separately by race, Hispanic origin, age, most serious commitment offense, and the country in which the sentence was imposed. The within-state sampling rate for female prisoners was double that of males to improve the precision of female recidivism estimates. The combined number of persons in the 30 state samples totaled 70,878 individuals. (This number dropped to 67,966 after accounting for those who died during the subsequent 9 years, lacked criminal-history records, or had invalid release records.) Each prisoner in the sample was assigned a weight based on the probability of selection within the state.

Collecting and processing criminal-history data for recidivism research

BJS used the state and FBI identification numbers to collect the criminal-history records on the released prisoners through the FBI's Interstate Identification Index (III) via the International Justice and Public Safety Network (Nlets). These records contained arrests, from state and federal criminal-justice agencies across the 50 states and the District of Columbia, prior to and following prison releases in 2005. Nlets parsed

fields from individual criminal-history records into a relational database with a uniform record layout consisting of state- and federal-specific numeric codes and text descriptions (e.g., criminal statutes and case-outcome information).

NORC at the University of Chicago helped BJS standardize the content of the relational database into a uniform coding structure to support the national-level recidivism research. With the exception of vehicular manslaughter, driving under the influence or driving while intoxicated (DUI/DWI), and hit-and-run offenses, BJS excluded traffic violations from the study due to the variation in coverage of these events in state criminal-history records.

This study used the death information from the FBI's III and the Social Security Administration's public Death Master File to identify individuals who died during the 9-year follow-up period. BJS documented that 2,173 of the 70,878 sampled prisoners died during the 9-year follow-up period and removed these cases from the recidivism analysis along with four additional cases that were determined to be invalid release records.

Missing criminal-history records

Among the 68,701 sampled prisoners not identified as deceased during the follow-up period, BJS did not receive criminal-history records on a total of 735 prisoners (involving 27 of the study's 30 states) because either the state DOCs were unable to provide the prisoners' FBI or state identification number or the prisoner had an identification number that did not link to a criminal-history record either in the FBI or a state record repository. To account for the missing criminal-history records and to ensure the recidivism statistics were representative of all 68,701 prisoners in the analysis, BJS developed weighting-class adjustments to account for those prisoners without criminal-history information to reduce non-response bias.

To create the statistical adjustments, the 68,701 sampled prisoners were stratified into groups by crossing two categories of sex (male or female), five categories of age at release (24 or younger, 25 to 29, 30 to 34, 35 to 39, or 40 or older), four categories of race and Hispanic origin (non-Hispanic white, non-Hispanic black, Hispanic, or other race), and four categories of the most serious commitment offense (violent, property, drug, or public order). Within each subgroup, statistical weights were applied to the data of the 67,966 prisoners with criminal-history information to allow their data to represent the 735 prisoners without criminal-history information.

Conducting tests of statistical significance

This study was based on a sample, not a complete enumeration, so the estimates are subject to sampling error. One measure of the sampling error associated with an estimate is the standard error. The standard error can vary from one estimate to the next. In general, an estimate with a smaller standard error provides a more accurate approximation of the true value than an estimate with a larger standard error. Estimates with relatively large standard errors should be interpreted with caution. BJS conducted tests to determine whether differences in the estimates were statistically significant once the sampling error was taken into account.

All differences discussed in this report are statistically significant at the 95% confidence level unless otherwise stated. Standard errors were generated using Stata, a statistical software package that calculates sampling errors for data from complex sample surveys.

Other measures of recidivism

In addition to new arrests, this study examined the recidivism patterns of former prisoners based on arrests within 9 years of exiting prison in 2005 that resulted in a subsequent court conviction. This measure is based on the time from release to the first date of arrest that led to a conviction, not the date of the conviction. The arrests that occurred within the follow-up period were tracked for 6 more months after year-9 to determine whether the case outcomes led to a subsequent conviction. This measure included prisoners released in 29 of the study's 30 states. Prisoners released in Louisiana were excluded because the disposition information from that state was generally not linked to the associated arrest.

The return-to-prison rates were based on prisoners released from 23 of the 30 states. The criminal-history data provided information on arrests that resulted in imprisonment during the follow-up period either within or outside of the state that released the prisoner, while the NCRP data provided

information on returns to prison for probation or parole violations or sentences for new crimes within the state that released them. Prisoners released in Maryland, Nebraska, Nevada, Ohio, Pennsylvania, and Virginia were excluded from the return-to-prison analysis because the complete prison-admission data needed to locate returns to prison during the first 5 years following release were unavailable. Prisoners released in Louisiana were also excluded from the return-to-prison analysis because the sentencing information in the criminal-history records was generally not linked to the associated arrest.

Comparing recidivism rates in this report to those from prior BJS studies

Given the increases in the number of states in the study and the length of the follow-up period, as well as improvements to the nation's criminal-history records over time, direct comparisons of the recidivism estimates from this study should not be made to those from BJS recidivism studies of previously released cohorts of prisoners.

Direct comparisons of the 9-year recidivism rates from this study on prisoners released in 30 states in 2005 to the 3-year rates from the previous BJS recidivism study on prisoners released in 15 states in 1994 should not be made due to differences in the two samples of prisoners. To control for the differences in the number of states in the studies and follow-up period lengths, BJS conducted analyses that limited the comparison to the 3-year cumulative arrest percentages among the prisoners released in the 11 states that provided the data for both studies (California, Florida, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Texas, and Virginia).

Among the prisoners released in these 11 states in 1994 after serving time for rape or sexual assault, 5% of the prisoners were arrested for rape or sexual assault within 3 years. Of those released in these 11 states in 2005 after serving time for rape or sexual assault, 4% of the prisoners were arrested for rape or sexual assault within 3 years. The difference between these percentages was not statistically significant.

Due to efforts by the FBI and individual states to improve their criminal-history record systems, national criminal-history data may now capture more information on offenders' criminal activities than in the past. However, the potential effects of these improvements of the nation's criminal-history records on the observed recidivism rates are difficult to quantify.

For the 2005 study, BJS first used the prisoner records and criminal-history data to analyze the 5-year recidivism patterns. BJS extended the original 5-year follow-up period to 9 years to assess how recidivism patterns change with longer follow-up periods. Findings from this study were published in *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)* (NCJ 250975, BJS web, May 2018). Recidivism estimates in this report may differ slightly from previously published estimates on prisoners released in 2005 based on updates to the data used for the study.

Offense definitions

Violent offenses include homicide, rape or sexual assault, robbery, assault, and other miscellaneous or unspecified violent offenses.

Homicide includes murder, non-negligent and negligent manslaughter, and unspecified homicide offenses.

Rape or sexual assault includes (1) forcible intercourse (vaginal, anal, or oral) with a female or male; (2) forcible sodomy or penetration with a foreign object (sometimes called "deviate sexual assault"); (3) forcible or violent sexual acts not involving intercourse; (4) non-forcible sexual acts with a minor (such as statutory rape or incest with a minor); and (5) non-forcible sexual acts with someone unable to give legal or factual consent due to mental or physical defect or intoxication.

Robbery is the unlawful taking of property that is in the immediate possession of another, by force or the threat of force. Includes forcible purse-snatching but excludes non-forcible purse-snatching.

Assault includes aggravated, simple, and unspecified assault. Aggravated assault includes (1) intentionally and without legal justification causing serious bodily injury, with or without a deadly weapon; or (2) using a deadly or dangerous weapon to threaten, attempt, or cause bodily injury, regardless of the degree of injury, if any. It also includes attempted murder, aggravated battery, felonious assault, and assault with a deadly weapon. Simple assault includes intentionally and without legal justification causing less-than-serious bodily injury without a deadly or dangerous weapon, or attempting or threatening bodily injury without a dangerous or deadly weapon.

Property offenses include burglary, fraud or forgery, larceny, motor vehicle theft, and other miscellaneous or unspecified property offenses.

Drug offenses include possession, trafficking, and other miscellaneous or unspecified drug offenses.

Public-order offenses include violations of the peace or order of the community or threats to the public health or safety through unacceptable conduct, interference with a governmental authority, or the violation of civil rights or liberties. This category includes weapons offenses, DUI/DWI, probation and parole violations, obstruction of justice, commercialized vice, disorderly conduct, and other miscellaneous or unspecified offenses.

Arrests for probation and parole violations

In this report, arrests for probation and parole violations were included as public-order offenses. Excluding arrests for probation and parole violations from the analysis would have had only a small impact on the recidivism rates. Excluding arrests for probation and parole violations, 64.2% of state prisoners released in 2005 in 30 states after serving time for rape or sexual assault were arrested at least once within 9 years. By comparison, 66.9% of such released offenders were arrested within 9 years when including these arrests. In other words, 96% of the released sex offenders who were arrested during the 9-year follow-up period were arrested for an offense other than a probation or parole violation.

APPENDIX TABLE 1

Most serious commitment offense of prisoners released in 30 states in 2005, by sex of offender

Most serious commitment offense	All prisoners		Male		Female	
	Number	Percent	Number	Percent	Number	Percent
Total	401,288	100%	358,398	100%	42,890	100%
Violent	103,197	25.7%	96,879	27.0%	6,317	14.7%
Homicide	7,569	1.9	6,869	1.9	700	1.6
Rape/sexual assault	20,195	5.0	19,871	5.5	324	0.8
Robbery	28,717	7.2	27,046	7.5	1,671	3.9
Assault	38,468	9.6	35,771	10.0	2,697	6.3
Other violent	8,247	2.1	7,323	2.0	924	2.2
Property	119,323	29.7%	103,013	28.7%	16,310	38.0%
Drug	127,890	31.9%	111,565	31.1%	16,325	38.1%
Public order	50,879	12.7%	46,940	13.1%	3,939	9.2%

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. See appendix table 2 for standard errors.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 2

Standard errors for appendix table 1: Most serious commitment offense of prisoners released in 30 states in 2005, by sex of offender

Most serious commitment offense	All prisoners		Male		Female	
	Number	Percent	Number	Percent	Number	Percent
Total	44	~	42	~	13	~
Violent	1,053	0.26%	1,043	0.29%	149	0.35%
Homicide	1	--	3	--	3	0.01
Rape/sexual assault	535	0.13	534	0.15	36	0.08
Robbery	592	0.15	587	0.16	81	0.19
Assault	781	0.19	773	0.22	109	0.25
Other violent	361	0.09	354	0.10	68	0.16
Property	1,108	0.28%	1,086	0.30%	215	0.50%
Drug	1,116	0.28%	1,096	0.31%	214	0.50%
Public order	740	0.18%	732	0.20%	107	0.25%

--Less than 0.005%.

~Not applicable.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 3

Standard errors for table 1: Characteristics of prisoners released in 30 states in 2005, by most serious commitment offense

Characteristic	All prisoners	Most serious commitment offense		
		Rape/sexual assault	Assault	Offense other than rape/ sexual assault
Sex				
Male	0.003%	0.18%	0.30%	0.02%
Female	0.003	0.18	0.30	0.02
Race/Hispanic origin				
White	0.28%	1.37%	1.02%	0.29%
Black/African American	0.27	1.17	0.99	0.28
Hispanic/Latino	0.27	1.28	1.07	0.27
Other	0.09	0.52	0.41	0.09
Age at release				
24 or younger	0.22%	0.83%	0.84%	0.23%
25–29	0.24	0.98	0.90	0.24
30–34	0.22	0.93	0.83	0.23
35–39	0.22	0.95	0.78	0.23
40 or older	0.28	1.37	0.96	0.28
Mean	0.06 yrs.	0.32 yrs.	0.20 yrs.	0.06 yrs.
Type of prison release				
Conditional	0.17%	1.11%	0.74%	0.17%
Unconditional	0.17	1.11	0.74	0.17
Maximum sentence length				
1–<2 years	0.23%	0.86%	0.61%	0.24%
2–<5 years	0.29	1.38	1.02	0.29
5–<10 years	0.22	1.21	0.80	0.23
10 years or more	0.14	1.06	0.45	0.13
Number of prior arrests per released prisoner				
4 or fewer	0.20%	1.37%	0.80%	0.20%
5–9	0.26	1.23	0.97	0.27
10 or more	0.28	1.31	1.10	0.28
Mean	0.06 arsts.	0.22 arsts.	0.21 arsts.	0.06 arsts.
At least one prior arrest for—				
Drug offense	0.25%	1.36%	1.04%	0.25%
Property offense	0.20	1.34	0.80	0.20
Number of released prisoners	44	535	781	537

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 4

Standard errors for table 2: Percent of prisoners released in 30 states in 2005 who were arrested within 9 years following release, by most serious commitment offense and types of post-release arrest charges

	Post-release arrest offense								
		Violent							
Most serious commitment offense	Any offense	Total violent	Homicide	Rape/sexual assault	Robbery	Assault	Property	Drug	Public order
All prisoners	0.20%	0.29%	0.07%	0.10%	0.18%	0.28%	0.30%	0.30%	0.24%
Violent	0.45%	0.59%	0.13%	0.24%	0.36%	0.57%	0.59%	0.59%	0.52%
Homicide	0.06	0.06	0.02	0.02	0.02	0.05	0.05	0.05	0.06
Rape/sexual assault	1.24	1.25	0.06	0.72	0.61	1.07	1.21	1.12	1.30
Robbery	0.74	1.07	0.18	0.44	0.80	1.01	1.07	1.08	0.93
Assault	0.76	1.09	0.25	0.36	0.62	1.08	1.09	1.09	0.91
Property	0.33%	0.56%	0.12%	0.18%	0.36%	0.53%	0.54%	0.56%	0.45%
Drug	0.35%	0.51%	0.12%	0.14%	0.28%	0.48%	0.53%	0.51%	0.45%
Public order	0.56%	0.76%	0.20%	0.19%	0.46%	0.72%	0.77%	0.77%	0.66%
Rape/sexual assault	1.24%	1.25%	0.06%	0.72%	0.61%	1.07%	1.21%	1.12%	1.30%
Offense other than rape/ sexual assault	0.20%	0.30%	0.07%	0.09%	0.18%	0.29%	0.31%	0.30%	0.24%

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 5

Standard errors for table 3: Cumulative percent of prisoners released in 30 states in 2005 who were arrested following release, by year following release and most serious commitment offense

	Most serious commitment offense							
	All prisoners		Rape/sexual assault		Assault		Offense other than rape/sexual assault	
Year after release	Year of first arrest	Cumulative arrest percentage	Year of first arrest	Cumulative arrest percentage	Year of first arrest	Cumulative arrest percentage	Year of first arrest	Cumulative arrest percentage
1	0.29%	0.29%	1.36%	1.36%	1.10%	1.10%	0.29%	0.29%
2	0.21	0.27	0.90	1.38	0.78	1.02	0.22	0.27
3	0.15	0.25	0.64	1.37	0.57	0.95	0.15	0.25
4	0.11	0.23	0.47	1.35	0.45	0.88	0.12	0.23
5	0.09	0.22	0.57	1.31	0.38	0.82	0.09	0.22
6	0.07	0.21	0.49	1.28	0.24	0.80	0.07	0.21
7	0.06	0.21	0.32	1.26	0.17	0.78	0.06	0.21
8	0.05	0.20	0.26	1.25	0.17	0.77	0.06	0.20
9	0.05	0.20	0.28	1.24	0.12	0.76	0.05	0.20

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 6

Standard errors for table 4: Cumulative arrest percentage of prisoners released in 29 states in 2005 after serving a sentence for rape/sexual assault or assault who had an arrest that led to a conviction after release

		Most serious commitment offense	
Year after release	All prisoners	Rape/sexual assault	Assault
1	0.28%	1.00%	0.94%
2	0.30	1.18	1.08
3	0.31	1.25	1.09
4	0.30	1.32	1.08
5	0.29	1.34	1.05
6	0.29	1.36	1.03
7	0.28	1.36	1.00
8	0.28	1.36	0.97
9	0.27	1.36	0.96

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 8

Standard errors for table 6: Cumulative percent of prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault who were arrested outside the state of release, by year after release

		Most serious commitment offense	
Year after release	All prisoners	Rape/sexual assault	Assault
1	0.09%	0.27%	0.38%
2	0.11	0.37	0.49
3	0.13	0.54	0.56
4	0.15	0.62	0.62
5	0.16	0.69	0.67
6	0.17	0.74	0.70
7	0.18	0.75	0.73
8	0.19	0.76	0.76
9	0.19	0.79	0.79

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 7

Standard errors for table 5 and figure 2: Cumulative percent of prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault who were arrested for rape/sexual assault after release, by age and year after release

Most serious commitment offense	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
All prisoners	0.04%	0.06%	0.07%	0.07%	0.08%	0.09%	0.09%	0.09%	0.10%
Prisoners released after serving a sentence for rape/sexual assault	0.37%	0.47%	0.56%	0.63%	0.67%	0.67%	0.69%	0.72%	0.72%
Age at release									
24 or younger	0.75	1.92	2.44	2.45	2.46	2.46	2.46	2.50	2.50
25–39	0.77	0.82	0.85	0.87	1.01	1.02	1.04	1.06	1.07
40 or older	0.27	0.43	0.64	0.90	0.90	0.91	0.93	1.04	1.04
Race/Hispanic origin									
White	0.46	0.52	0.56	0.68	0.71	0.72	0.74	0.75	0.76
Black/African American	0.48	0.78	0.80	1.11	1.13	1.14	1.19	1.41	1.41
Hispanic/Latino	1.47	1.87	2.44	2.44	2.46	2.46	2.48	2.48	2.48
Other	0.39	0.95	1.16	1.19	1.25	1.28	1.67	1.67	1.69

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 9

Standard errors for table 7: Annual arrest percentage of prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault, by prisoner characteristics

Characteristic	Number of released prisoners	Total arrested within 9 years	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
All prisoners	44	0.20%	0.29%	0.29%	0.29%	0.29%	0.28%	0.28%	0.28%	0.27%	0.27%
Prisoners released after serving a sentence for rape/ sexual assault	535	1.24%	1.36%	1.31%	1.30%	1.12%	1.14%	1.17%	1.12%	1.09%	1.10%
Age at release											
24 or younger	176	2.25	3.61	3.55	3.34	2.71	3.41	2.92	3.41	3.31	2.67
25–39	355	1.75	2.08	2.05	1.99	1.70	1.78	1.78	1.71	1.62	1.71
40 or older	374	2.07	2.01	1.88	1.98	1.77	1.59	1.80	1.62	1.62	1.67
Race/Hispanic origin											
White	356	1.63	1.68	1.56	1.57	1.38	1.32	1.45	1.30	1.35	1.26
Black/African American	267	1.79	2.48	2.46	2.46	2.16	2.31	2.05	2.34	2.37	2.45
Hispanic/Latino	295	4.01	4.24	4.13	4.08	3.26	3.55	3.78	3.35	2.63	2.85
Other	106	7.03	6.97	7.81	5.53	7.05	2.67	5.46	2.70	2.32	1.85
Prisoners released after serving a sentence for assault	781	0.76%	1.10%	1.09%	1.06%	1.05%	1.05%	1.03%	1.04%	1.04%	1.01%
Age at release											
24 or younger	351	1.49	2.37	2.40	2.31	2.20	2.35	2.18	2.06	2.22	2.23
25–39	599	1.01	1.53	1.51	1.50	1.48	1.46	1.45	1.49	1.49	1.43
40 or older	425	1.66	2.10	2.04	1.95	2.02	1.96	1.98	1.94	1.90	1.78
Race/Hispanic origin											
White	465	1.27	1.75	1.69	1.67	1.67	1.67	1.69	1.63	1.64	1.56
Black/African American	435	0.89	1.55	1.55	1.52	1.51	1.49	1.47	1.51	1.50	1.45
Hispanic/Latino	483	2.16	2.89	2.85	2.76	2.75	2.73	2.58	2.67	2.72	2.66
Other	159	4.28	6.07	6.17	5.80	5.15	5.80	5.79	5.79	6.01	5.01

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 10

Standard errors for table 8: Annual arrest percentage of prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault, by types of post-release arrest offenses

Most serious commitment offense and type of post-release arrest offense	Total arrested within 9 years	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Commitment offense: Rape or sexual assault										
Post-release arrest offense										
Violent	1.25%	0.76%	0.69%	0.67%	0.71%	0.65%	0.46%	0.53%	0.42%	0.41%
Property	1.21	0.72	0.65	0.65	0.59	0.66	0.56	0.62	0.65	0.47
Drug	1.12	0.67	0.66	0.59	0.30	0.49	0.53	0.56	0.54	0.55
Public order	1.30	1.31	1.26	1.25	1.06	1.02	1.08	1.08	1.00	1.06
Commitment offense: Assault										
Post-release arrest offense										
Violent	1.09%	0.74%	0.76%	0.66%	0.70%	0.73%	0.57%	0.61%	0.64%	0.60%
Property	1.09	0.75	0.69	0.71	0.62	0.57	0.61	0.66	0.68	0.66
Drug	1.09	0.77	0.78	0.58	0.68	0.68	0.65	0.71	0.72	0.71
Public order	0.91	1.09	1.03	1.00	0.99	0.96	0.95	0.95	0.97	0.90

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 11

Standard errors for table 9: Types of offenses for which prisoners were arrested within 9 years following release in 30 states in 2005, by most serious commitment offense

		Most serious commitment offense							
		Violent							
Post-release arrest offense	Number of post-release arrest offenses	Homicide	Rape/sexual assault	Robbery	Assault	Other violent	Property	Drug	Public order
Any offense	24,074	0.01%	0.17%	0.25%	0.39%	0.16%	0.57%	0.55%	0.34%
Violent									
Total	4,212	0.02%	0.24%	0.34%	0.57%	0.28%	0.65%	0.60%	0.44%
Homicide	335	0.29	0.32	1.08	1.87	2.04	3.25	2.75	2.28
Rape/sexual assault	504	0.06	1.53	1.38	1.20	0.66	1.86	1.80	1.25
Robbery	1,086	0.03	0.37	0.91	0.86	0.30	1.38	1.27	0.81
Assault	3,082	0.02	0.21	0.32	0.64	0.34	0.68	0.63	0.47
Property	7,651	0.01%	0.18%	0.30%	0.34%	0.15%	0.65%	0.55%	0.33%
Drug	8,728	0.01%	0.16%	0.30%	0.42%	0.13%	0.73%	0.77%	0.45%
Public order	12,873	0.01%	0.26%	0.30%	0.54%	0.22%	0.68%	0.68%	0.44%
Percent of all released prisoners		--	0.13	0.15	0.19	0.09	0.28	0.28	0.18

--Less than 0.005%.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 12

Standard errors for table 10: Characteristics of male prisoners released in 30 states in 2005, by most serious commitment offense

Characteristic	All male prisoners	Most serious commitment offense		Offense other than rape/ sexual assault
		Rape/sexual assault	Assault	
Race/Hispanic origin				
White	0.31%	1.39%	1.09%	0.32%
Black/African American	0.30	1.18	1.06	0.31
Hispanic/Latino	0.29	1.30	1.14	0.30
Other	0.10	0.52	0.43	0.10
Age at release				
24 or younger	0.25%	0.84%	0.89%	0.26%
25–29	0.26	1.00	0.96	0.27
30–34	0.24	0.94	0.89	0.25
35–39	0.24	0.96	0.83	0.25
40 or older	0.31	1.38	1.02	0.31
Mean	0.07 yrs.	0.33 yrs.	0.21 yrs.	0.07 yrs.
Type of prison release				
Conditional	0.18%	1.12%	0.78%	0.19%
Unconditional	0.18	1.12	0.78	0.19
Maximum sentence length				
1–<2 years	0.25%	0.88%	0.64%	0.26%
2–<5 years	0.32	1.40	1.09	0.32
5–<10 years	0.25	1.23	0.86	0.25
10 years or more	0.15	1.07	0.48	0.15
Number of prior arrests per prisoner				
4 or fewer	0.23%	1.39%	0.84%	0.22%
5–9	0.29	1.25	1.03	0.30
10 or more	0.31	1.33	1.17	0.31
Mean	0.07 arsts.	0.23 arsts.	0.23 arsts.	0.07 arsts.
At least one prior arrest for—				
Drug offense	0.28%	1.38%	1.11%	0.28%
Property offense	0.23	1.35	0.85	0.22
Number of released prisoners	42	534	773	536

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 13

Standard errors for table 11: Characteristics of female prisoners released in 30 states in 2005, by most serious commitment offense

Characteristic	All female prisoners	Most serious commitment offense: Rape/sexual assault	Most serious commitment offense: Assault
Race/Hispanic origin			
White	0.50%	4.64%	1.95%
Black/African American	0.47	3.29	2.07
Hispanic/Latino	0.41	3.77	1.78
Other	0.15	0.36	0.69
Age at release			
24 or younger	0.32%	4.17%	1.46%
25–29	0.38	3.25	1.56
30–34	0.38	4.28	1.62
35–39	0.41	4.24	1.61
40 or older	0.49	5.40	1.95
Mean	0.09 yrs.	1.04 yrs.	0.36 yrs.
Type of prison release			
Conditional	0.30%	5.29%	1.79%
Unconditional	0.30	5.29	1.79
Maximum sentence length			
1–<2 years	0.46%	4.14%	1.44%
2–<5 years	0.50	3.80	2.00
5–<10 years	0.34	5.70	1.48
10 years or more	0.17	4.56	0.73
Number of prior arrests per released prisoner			
4 or fewer	0.35%	4.96%	1.85%
5–9	0.45	3.87	1.94
10 or more	0.47	3.73	2.09
Mean	0.11 arsts.	0.50 arsts.	0.38 arsts.
At least one prior arrest for—			
Drug offense	0.40%	5.96%	2.08%
Property offense	0.34	5.19	1.78
Number of released prisoners	13	36	109

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 14

Standard errors for table 12: Cumulative arrest percentage of male prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault who were arrested after release, by year after release

Year after release	All male prisoners	Most serious commitment offense: Rape/sexual assault	Most serious commitment offense: Assault
1	0.32%	1.37%	1.17%
2	0.29	1.40	1.09
3	0.27	1.38	1.00
4	0.26	1.36	0.93
5	0.24	1.33	0.87
6	0.23	1.30	0.84
7	0.23	1.28	0.83
8	0.22	1.27	0.81
9	0.22	1.25	0.81

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 15

Standard errors for table 13: Cumulative arrest percentage of female prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault who were arrested after release, by year after release

Year after release	All female prisoners	Most serious commitment offense: Rape/sexual assault	Most serious commitment offense: Assault
1	0.49%	5.64%	2.04%
2	0.49	5.68	2.09
3	0.47	5.66	2.04
4	0.45	5.62	1.98
5	0.43	5.58	1.92
6	0.42	5.53	1.87
7	0.41	5.49	1.83
8	0.40	5.49	1.79
9	0.39	5.48	1.78

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 16

Percent of male prisoners released in 30 states in 2005 who were arrested within 9 years following release, by most serious commitment offense and types of post-release arrest offenses

	Post-release arrest offense								
		Violent							
Most serious commitment offense	Any offense	Total violent[a]	Homicide	Rape/sexual assault	Robbery	Assault	Property	Drug	Public order
All male prisoners	84.0%	40.9%	1.3%	2.9%	8.3%	32.8%	48.0%	48.6%	69.6%
Violent[a]	78.8%	44.2%	1.4%	4.3%	9.5%	34.7%	39.6%	37.2%	65.8%
Homicide	61.9	30.7	2.9	2.1	4.5	23.9	25.2	27.3	47.6
Rape/sexual assault	67.1	28.4	0.2	7.9	3.9	18.8	24.4	18.7	59.0
Robbery	84.5	48.1	1.5	3.6	17.1	34.8	47.4	45.6	67.6
Assault	83.8	51.9	1.4	3.0	8.1	45.1	44.4	44.2	70.8
Property	88.8%	43.1%	1.1%	2.9%	9.8%	34.2%	64.1%	49.5%	74.0%
Drug	84.9%	36.1%	1.2%	1.8%	6.3%	29.8%	42.6%	61.5%	68.4%
Public order	82.3%	41.0%	1.4%	2.6%	7.0%	33.3%	42.5%	39.1%	71.0%
Rape/sexual assault*	67.1%	28.4%	0.2%	7.9%	3.9%	18.8%	24.4%	18.7%	59.0%
Offense other than rape/ sexual assault[b]	85.0% †	41.7% †	1.3% †	2.6% †	8.5% †	33.6% †	49.3% †	50.3% †	70.2% †

Note: The numerator for each percentage is the number of persons arrested for that offense during the 9-year follow-up period, and the denominator is the number released after serving time for each type of commitment offense. Persons could have been in prison for more than one offense, the most serious of which is reported. Details may not sum to totals because a person may be arrested more than once for different types of offenses and each arrest may involve more than one offense. See appendix table 1 for the number of released male prisoners by most serious commitment offense. See appendix table 23 for standard errors.

*Comparison group.

†Difference with comparison group (rape/sexual assault) is significant at the 95% confidence level.

[a]Includes other miscellaneous violent offenses, not shown separately.

[b]Includes the 338,527 male prisoners whose most serious commitment offense was an offense other than rape or sexual assault.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 17

Cumulative percent of male prisoners released in 29 states in 2005 after serving a sentence for rape/sexual assault or assault who had an arrest that led to a conviction after release

		Most serious commitment offense	
Year after release	All male prisoners	Rape/sexual assault	Assault
1	26.0%	12.9%	23.1%
2	40.3	22.4	38.7
3	49.9	28.7	47.5
4	56.2	34.5	54.7
5	60.8	38.9	59.4
6	64.1	42.5	63.4
7	66.7	45.3	66.4
8	68.7	48.3	69.1
9	70.1	49.7	70.0

Note: Estimates based on time from release to first arrest that led to a conviction among prisoners released in 29 of the study's 30 states (all but Louisiana). Persons could have been in prison for more than one offense, the most serious of which is reported. See appendix table 24 for standard errors.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 18

Cumulative percent of male prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault who were arrested for rape/sexual assault after release, by age and year after release

Most serious commitment offense	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
All male prisoners	0.6%	1.0%	1.4%	1.7%	1.9%	2.2%	2.5%	2.7%	2.9%
Male prisoners released after serving a sentence for rape/sexual assault	1.9%	3.5%	4.4%	5.1%	6.0%	6.4%	7.0%	7.7%	7.9%
Age at release									
24 or younger	2.5	7.2	9.5	9.9	10.4	10.6	11.4	11.9	12.0
25–39	2.9	3.9	4.4	5.0	6.4	7.0	7.6	8.3	8.6
40 or older	0.8	2.2	3.0	4.0	4.3	4.6	5.0	5.9	6.0
Race/Hispanic origin									
White[a]	1.6	2.7	3.3	4.0	4.7	5.2	5.6	6.0	6.3
Black/African American[a]	1.7	4.4	4.6	6.0	6.6	6.9	7.8	9.7	9.7
Hispanic/Latino	3.4	5.0	7.6	7.6	8.2	8.2	8.6	8.7	8.7
Other[a,b]	0.8	2.4	3.7	3.9	4.3	4.6	6.5	6.5	6.8

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. Data on prisoners' sex and age at release were known for 100% of cases; and race/Hispanic origin, for 99.96%. See appendix table 25 for standard errors.

[a]Excludes persons of Hispanic/Latino origin (e.g., "white" refers to non-Hispanic whites and "black" refers to non-Hispanic blacks).

[b]Includes Asians, Native Hawaiians, and Other Pacific Islanders; American Indians and Alaska Natives; and persons of two or more races.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 19

Cumulative percent of male prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault who were arrested outside the state of release, by year after release

		Most serious commitment offense	
Year after release	All male prisoners	Rape/sexual assault	Assault
1	3.4%	2.1%	3.8%
2	5.9	3.5	6.5
3	7.9	5.3	8.6
4	9.6	6.8	10.4
5	11.1	8.3	12.2
6	12.5	9.5	13.4
7	13.7	10.2	14.7
8	14.8	10.8	15.9
9	15.8	11.5	17.1

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. See appendix table 26 for standard errors.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 20

Annual arrest percentage of male prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault, by prisoner characteristics

Characteristic	Number of released prisoners	Total arrested within 9 years	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
All male prisoners	358,398	84.0%	44.8%	38.2%	34.7%	32.3%	30.4%	28.3%	27.6%	26.3%	24.3%
Male prisoners released after serving a sentence for rape/ sexual assault	19,871	67.1%	29.0%	26.6%	24.3%	19.4%	20.4%	19.6%	17.7%	17.5%	16.3%
Age at release											
24 or younger	2,437	83.7	42.4	37.4	29.7	21.2	27.1	22.1	25.8	27.8	18.9
25–39	8,698	72.3	32.8	30.5	27.8	21.9	23.4	22.6	19.4	17.7	17.7
40 or older	8,736	57.3	21.5	19.7	19.3	16.4	15.4	15.9	13.8	14.4	14.1
Race/Hispanic origin											
White[a]	10,253	61.5	23.7	21.9	20.2	16.9	16.6	17.5	14.2	16.1	13.0
Black/African American[a]	5,435	78.9	35.2	34.1	30.3	24.9	27.6	21.6	26.0	25.5	25.8
Hispanic/Latino	3,431	65.1	34.8	26.7	27.3	16.2	21.0	22.4	15.1	9.2	11.3
Other[a,b]	709	66.7	25.2	31.7	19.7	24.1	11.3	17.1	13.5	11.4	9.7
Male prisoners released after serving a sentence for assault	35,771	83.8%	44.1%	38.7%	34.4%	32.8%	31.9%	29.7%	29.7%	29.0%	25.2%
Age at release											
24 or younger	7,005	88.2	52.2	45.2	36.3	31.0	36.1	29.8	25.9	29.9	28.0
25–39	19,134	85.9	44.7	39.3	36.3	34.3	32.8	30.5	32.8	31.1	27.1
40 or older	9,631	76.3	36.9	32.6	29.5	31.3	27.2	28.0	26.3	24.1	19.5
Race/Hispanic origin											
White[a]	12,884	81.1	39.5	34.7	32.9	29.8	31.5	30.3	27.9	26.9	23.3
Black/African American[a]	13,270	87.6	46.4	42.5	36.4	36.0	32.0	31.1	30.9	29.6	26.3
Hispanic/Latino	8,278	81.2	46.5	37.8	33.0	33.1	32.0	25.4	29.5	29.1	25.9
Other[a,b]	1,215	86.1	48.6	45.6	35.7	29.7	35.3	33.9	34.4	39.4	25.0

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. Percentages exclude missing data. Data on male prisoners' age at release were reported for 100% of cases; and race/Hispanic origin, for 99.85%. See appendix table 27 for standard errors.

[a]Excludes persons of Hispanic/Latino origin (e.g., "white" refers to non-Hispanic whites and "black" refers to non-Hispanic blacks).

[b]Includes Asians, Native Hawaiians, and Other Pacific Islanders; American Indians and Alaska Natives; and persons of two or more races.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 21

Annual arrest percentage of male prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault, by types of post-release arrest offenses

Most serious commitment offense and type of post-release arrest offense	Total arrested within 9 years	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Male prisoners released after serving a sentence for rape/ sexual assault										
Violent	28.4%	6.7%	6.4%	5.4%	5.4%	5.3%	3.8%	4.1%	3.0%	2.6%
Property	24.4	5.7	5.7	4.7	4.0	4.7	3.9	4.3	4.5	3.1
Drug	18.7	4.3	4.6	3.9	1.9	3.3	3.0	3.1	3.2	3.3
Public order	59.0	23.4	20.9	19.6	15.3	14.8	14.8	14.0	13.5	13.1
Male prisoners released after serving a sentence for assault										
Violent	51.9%	13.3%	13.6%	10.7%	11.5%	12.1%	8.3%	8.9%	8.9%	7.5%
Property	44.4	12.6	10.7	11.1	8.9	7.8	7.9	8.7	8.8	8.5
Drug	44.2	11.9	12.3	7.9	9.4	9.0	8.3	8.9	9.2	8.2
Public order	70.8	31.6	25.6	23.6	22.7	20.4	19.9	19.8	20.2	16.7

Note: Persons could have been in prison for more than one offense, the most serious of which is reported. See appendix table 28 for standard errors.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 22

Types of offenses for which male prisoners were arrested within 9 years following release in 30 states in 2005, by most serious commitment offense

	Arrest offense								
		Violent							
Most serious commitment offense	Any offense	Total*	Homicide	Rape/sexual assault	Robbery	Assault	Property	Drug	Public order
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%
Violent	22.9%	30.9%	29.9%	40.7%	31.4%	29.9%	19.3%	17.7%	25.3%
Homicide	0.9	1.3	4.4	1.4	1.1	1.3	0.7	0.8	1.0
Rape/sexual assault	3.0	3.4	1.2	15.8	2.3	2.8	2.0	1.6	4.2
Robbery	6.8	8.9	8.2	10.4	16.5	7.6	7.4	6.0	6.3
Assault	10.2	14.4	10.6	10.1	9.7	15.6	7.7	8.2	11.5
Other violent	1.9	2.8	5.5	3.0	1.8	2.6	1.5	1.1	2.3
Property	34.5%	29.6%	27.5%	27.5%	34.5%	29.6%	46.2%	28.8%	32.5%
Drug	31.2%	26.2%	28.0%	19.8%	23.5%	26.9%	24.1%	43.9%	29.6%
Public order	11.5%	13.4%	14.7%	12.0%	10.6%	13.6%	10.4%	9.6%	12.6%
Number of arrest offenses during the 9 years following release	2,644,000	329,000	5,000	12,000	38,000	219,000	613,000	606,000	1,096,000

Note: An arrest may involve charges for more than one type of offense. Each unique offense category included in an arrest is counted once. There were an estimated 1,809,000 post-release arrests of male prisoners released in 30 states in 2005, and these included approximately 2,644,000 different offenses. Persons could have been in prison for more than one offense, the most serious of which is reported. Number of post-release arrest offenses was rounded to the nearest 1,000. See appendix table 29 for standard errors.

*Includes other miscellaneous violent offenses, not shown separately.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 23

Standard errors for appendix table 16: Percent of male prisoners released in 30 states in 2005 who were arrested within 9 years following release, by most serious commitment offense and types of post-release arrest offenses

	Post-release arrest offense								
		Violent							
Most serious commitment offense	Any offense	Total violent	Homicide	Rape/sexual assault	Robbery	Assault	Property	Drug	Public order
All male prisoners	0.22%	0.32%	0.08%	0.11%	0.20%	0.31%	0.33%	0.33%	0.26%
Violent	0.47%	0.63%	0.14%	0.26%	0.38%	0.60%	0.62%	0.62%	0.55%
Homicide	0.19	0.18	0.06	0.06	0.08	0.17	0.17	0.17	0.19
Rape/sexual assault	1.25	1.27	0.06	0.74	0.62	1.09	1.22	1.14	1.32
Robbery	0.78	1.12	0.19	0.47	0.84	1.06	1.12	1.13	0.98
Assault	0.81	1.16	0.26	0.39	0.66	1.15	1.16	1.16	0.97
Property	0.37%	0.63%	0.14%	0.21%	0.41%	0.60%	0.61%	0.63%	0.50%
Drug	0.39%	0.57%	0.14%	0.16%	0.32%	0.54%	0.60%	0.57%	0.50%
Public order	0.59%	0.82%	0.22%	0.20%	0.50%	0.78%	0.83%	0.82%	0.70%
Rape/sexual assault	1.25%	1.27%	0.06%	0.74%	0.62%	1.09%	1.22%	1.14%	1.32%
Offense other than rape/sexual assault	0.22%	0.33%	0.08%	0.11%	0.20%	0.32%	0.34%	0.33%	0.27%

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 24

Standard errors for appendix table 17: Cumulative percent of male prisoners released in 29 states in 2005 after serving a sentence for rape/sexual assault or assault who had an arrest that led to a conviction after release

		Most serious commitment offense	
Year after release	All male prisoners	Rape/sexual assault	Assault
1	0.31%	1.03%	1.01%
2	0.33	1.21	1.16
3	0.34	1.29	1.17
4	0.33	1.36	1.15
5	0.32	1.38	1.13
6	0.32	1.40	1.10
7	0.31	1.40	1.07
8	0.30	1.41	1.04
9	0.30	1.40	1.03

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 26

Standard errors for appendix table 19: Cumulative percent of male prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault who were arrested outside the state of release, by year after release

		Most serious commitment offense	
Year after release	All male prisoners	Rape/sexual assault	Assault
1	0.10%	0.27%	0.41%
2	0.13	0.38	0.52
3	0.15	0.55	0.60
4	0.16	0.63	0.66
5	0.18	0.70	0.71
6	0.19	0.75	0.75
7	0.20	0.76	0.78
8	0.20	0.77	0.81
9	0.21	0.80	0.85

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 25

Standard errors for appendix table 18: Cumulative percent of male prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault who were arrested for rape/sexual assault after release, by age and year after release

Most serious commitment offense	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
All male prisoners	0.05%	0.06%	0.07%	0.08%	0.09%	0.10%	0.10%	0.10%	0.11%
Male prisoners released after serving a sentence for rape/sexual assault	0.38%	0.48%	0.57%	0.64%	0.68%	0.68%	0.70%	0.73%	0.74%
Age at release									
24 or younger	0.76	1.95	2.49	2.50	2.50	2.51	2.51	2.55	2.55
25–39	0.78	0.83	0.86	0.89	1.03	1.04	1.06	1.08	1.09
40 or older	0.28	0.44	0.64	0.91	0.92	0.92	0.94	1.05	1.05
Race/Hispanic origin									
White	0.47	0.54	0.57	0.70	0.72	0.74	0.76	0.77	0.78
Black/African American	0.49	0.79	0.80	1.12	1.14	1.15	1.20	1.42	1.42
Hispanic/Latino	1.48	1.88	2.46	2.46	2.48	2.48	2.50	2.50	2.50
Other	0.37	0.94	1.16	1.18	1.24	1.27	1.66	1.66	1.69

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 27

Standard errors for appendix table 20: Annual arrest percentage of male prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault, by prisoner characteristics

Characteristic	Number of released prisoners	Total arrested within 9 years	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
All male prisoners	42	0.22%	0.32%	0.32%	0.32%	0.32%	0.31%	0.31%	0.31%	0.30%	0.30%
Male prisoners released after serving a sentence for rape/ sexual assault	534	1.25%	1.37%	1.33%	1.32%	1.14%	1.16%	1.18%	1.14%	1.11%	1.11%
Age at release											
24 or younger	176	2.29	3.68	3.61	3.40	2.76	3.48	2.97	3.47	3.37	2.72
25–39	354	1.78	2.11	2.09	2.02	1.73	1.82	1.82	1.74	1.65	1.74
40 or older	373	2.09	2.03	1.90	2.00	1.79	1.61	1.82	1.64	1.64	1.69
Race/Hispanic origin											
White	354	1.66	1.71	1.59	1.60	1.41	1.35	1.48	1.33	1.38	1.29
Black/African American	267	1.80	2.50	2.48	2.48	2.17	2.33	2.07	2.36	2.38	2.47
Hispanic/Latino	295	4.04	4.27	4.16	4.11	3.29	3.58	3.81	3.37	2.66	2.87
Other	106	7.07	7.01	7.85	5.56	7.10	2.66	5.49	2.70	2.32	1.85
Male prisoners released after serving a sentence for assault	773	0.81%	1.17%	1.16%	1.13%	1.12%	1.12%	1.10%	1.11%	1.11%	1.07%
Age at release											
24 or younger	348	1.57	2.50	2.53	2.45	2.33	2.48	2.32	2.18	2.35	2.37
25–39	593	1.07	1.62	1.61	1.59	1.57	1.55	1.54	1.58	1.59	1.52
40 or older	420	1.78	2.26	2.19	2.10	2.18	2.11	2.13	2.09	2.05	1.92
Race/Hispanic origin											
White	461	1.34	1.85	1.79	1.77	1.78	1.78	1.80	1.73	1.75	1.66
Black/African American	429	0.95	1.66	1.68	1.64	1.63	1.61	1.59	1.64	1.62	1.57
Hispanic/Latino	480	2.24	2.99	2.95	2.86	2.85	2.83	2.68	2.77	2.82	2.76
Other	157	4.54	6.50	6.59	6.23	5.51	6.23	6.22	6.22	6.44	5.38

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 28

Standard errors for appendix table 21: Annual arrest percentage of male prisoners released in 30 states in 2005 after serving a sentence for rape/sexual assault or assault, by types of post-release arrest offenses

Most serious commitment offense and type of post-release arrest offense	Total arrested within 9 years	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Male prisoners released after serving a sentence for rape/sexual assault										
Violent	1.27%	0.78%	0.70%	0.68%	0.72%	0.66%	0.47%	0.54%	0.43%	0.42%
Property	1.22	0.73	0.66	0.66	0.60	0.67	0.57	0.63	0.66	0.48
Drug	1.14	0.68	0.67	0.60	0.30	0.50	0.54	0.57	0.55	0.55
Public order	1.32	1.33	1.28	1.27	1.08	1.03	1.10	1.09	1.01	1.08
Male prisoners released after serving a sentence for assault										
Violent	1.16%	0.79%	0.81%	0.71%	0.75%	0.79%	0.61%	0.66%	0.69%	0.64%
Property	1.16	0.80	0.74	0.75	0.66	0.61	0.64	0.70	0.72	0.71
Drug	1.16	0.83	0.83	0.62	0.73	0.73	0.70	0.76	0.76	0.75
Public order	0.97	1.16	1.10	1.07	1.05	1.02	1.01	1.01	1.04	0.96

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

APPENDIX TABLE 29

Standard errors for appendix table 22: Types of offenses for which male prisoners were arrested within 9 years following release in 30 states in 2005, by most serious commitment offense

	Arrest offense								
		Violent							
Most serious commitment offense	Any offense	Total	Homicide	Rape/sexual assault	Robbery	Assault	Property	Drug	Public order
Violent	0.52%	0.70%	2.82%	2.07%	1.29%	0.75%	0.53%	0.59%	0.69%
Homicide	0.01	0.02	0.31	0.07	0.04	0.02	0.01	0.01	0.01
Rape/sexual assault	0.19	0.25	0.33	1.55	0.39	0.23	0.21	0.18	0.28
Robbery	0.27	0.35	1.10	1.39	0.95	0.34	0.33	0.33	0.33
Assault	0.42	0.60	1.91	1.21	0.90	0.67	0.37	0.46	0.58
Other violent	0.17	0.30	2.09	0.67	0.31	0.35	0.17	0.14	0.23
Property	0.61%	0.68%	3.34%	1.88%	1.44%	0.72%	0.72%	0.79%	0.73%
Drug	0.60%	0.63%	2.82%	1.82%	1.32%	0.66%	0.60%	0.84%	0.74%
Public order	0.38%	0.46%	2.34%	1.26%	0.85%	0.50%	0.37%	0.49%	0.47%
Number of arrest offenses during the 9 years following release	23,699	4,181	334	504	1,075	3,053	7,501	8,551	12,707

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection, 2005–2014.

The Bureau of Justice Statistics of the U.S. Department of Justice is the principal federal agency responsible for measuring crime, criminal victimization, criminal offenders, victims of crime, correlates of crime, and the operation of criminal and civil justice systems at the federal, state, tribal, and local levels. BJS collects, analyzes, and disseminates reliable statistics on crime and justice systems in the United States, supports improvements to state and local criminal justice information systems, and participates with national and international organizations to develop and recommend national standards for justice statistics. Jeffrey H. Anderson is the director.

This report was written by Mariel Alper and Matthew R. Durose. Joshua Markman, a former BJS statistician, assisted with developing this study. Stephanie Mueller verified the report.

Caitlin Scoville and Jill Thomas edited the report. Tina Dorsey produced the report.

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PERFORMANCE MEASUREMENT SERIES

Recidivism after Release from Prison

August 2016

Office of the Secretary
Research and Policy Unit

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November 2, 2017

To: Executive Planning

From: Jon E. Litscher, Secretary

I am pleased to share with you the fourth in a series of "Recidivism after Release from Prison" reports, produced by the Wisconsin Department of Corrections' cross-divisional Research and Policy Unit.

This report provides updated recidivism trends for more than 156,000 offenders who were released from the Wisconsin correctional system between 1990 and 2013. Following a steady decrease beginning in 1993, recidivism rates have remained relatively stable in recent years.

In addition to updating overall trends in recidivism, this report adds new measures of recidivism. These new measures include recidivism rates by offenders' original incarceration offenses, and an analysis of the degree to which recidivists specialize in certain offense types. The report also includes recidivism rates by risk to reoffend. These measures will assist the Department in its continued efforts to match offenders with appropriate services to ensure their successful reentry into the community.

The Department will continue to identify and implement policies and procedures based on evidence-based principles to achieve the best possible outcomes for offenders, staff, and tax payers. Ultimately, our goal is to create safer communities. I'd like to thank all of the staff involved in the compilation of this report.

PERFORMANCE MEASUREMENT SERIES

Recidivism after Release from Prison

August 2016

Table of Contents

State of Wisconsin
Department of Corrections

Executive Summary

The Wisconsin Department of Corrections (WI DOC) defines recidivism as a new offense resulting in a conviction and sentence to the WI DOC. One, two, and three-year follow-up periods are calculated beginning on the day the offender is released from prison. Recidivism rates represent the number of persons who have recidivated divided by the total number of persons in a defined population. All recidivism rates are based on only Wisconsin offenses that have resulted in court dispositions that include custody or supervision under the WI DOC. This report summarizes recidivism rates for a total of 156,026 offenders released from the Wisconsin prison system between 1990 and 2013.

Recidivism Rates by Follow-up Period

Release Year	Follow-up Period	Recidivism Rate
2013	1-year	14.5%
2012	2-year	25.1%
2011	3-year	31.3%

Recidivism rates over the most recent several release years have remained relatively stable. Offenders released in 2009 had the lowest three-year recidivism rate in 20 years at 30.8%. Since then, the three-year rate increased slightly for those released in 2011, to 31.3%. One- and two-year recidivism rates have also remained fairly constant over the last several release years, with the one-year rate decreasing by 0.7 percentage points from 2011 to 2013, and the two-year rate increasing by 0.3 percentage points from 2010 to 2012.

Highlights:

Gender. Males recidivated at a consistently higher rate than females for all release years and follow-up periods.

Age at Release. Younger offenders were more likely to recidivate compared to older offenders. Offenders aged 20 to 29 made up the largest group of released offenders and recidivists.

Race. Black offenders had slightly higher recidivism rates than White offenders, but the difference between the two groups was the smallest for the entire report period (one percentage point) for 2011 releases.

Time to Recidivism Event. Half of the offenders who recidivated within the three-year follow-up period did so within the first year following their release from prison.

Length of Prison Stay. Recidivism increased with shorter lengths of stay. The lowest recidivism rates were found among offenders released from a period of incarceration that was five years or longer.

Risk Level. High risk offenders demonstrated the highest recidivism rates, followed by moderate risk offenders, then low risk offenders.

Original Offense Type. Offenders originally incarcerated for property offenses had the highest recidivism rates and those originally incarcerated for violent offenses had the lowest.

Offense Type Specialization. Recidivists whose original incarceration was for a violent offense were least likely to commit another violent offense, while public order recidivists were most likely to commit another public order offense.

Introduction

The Wisconsin Department of Corrections (WI DOC) defines recidivism as the following:

> *Following an episode of incarceration with the WI DOC, to commit a criminal offense that results in a new conviction and sentence to WI DOC custody or supervision.*

WI DOC recidivism rates represent the number of persons who have recidivated divided by the total number of persons released from an episode of confinement that included one or more adult conviction prison sentences. Recidivism rates are based only on Wisconsin offenses that have resulted in court dispositions that include custody or supervision under the WI DOC. This means that persons who have committed offenses, and are subsequently serving their sentences under other state or federal jurisdictions, are not counted as recidivists under this definition. Furthermore, offenses that result in only jail dispositions, fines or forfeitures, or municipal violations are not included in recidivism rate calculations.

Recidivism rates for three different follow-up periods are presented throughout this report. A follow-up period is the timeframe during which an offender is tracked to determine if he/she committed a new criminal offense. Recidivism rates are reported for one-, two-, and three-year follow-up periods. Additionally, this report includes recidivism rates for groups of offenders released between 1990 and 2013. A group of offenders released in the same year is referred to as a release cohort. Appendix A (see page 15) provides a detailed description of the methodology used to calculate recidivism rates.

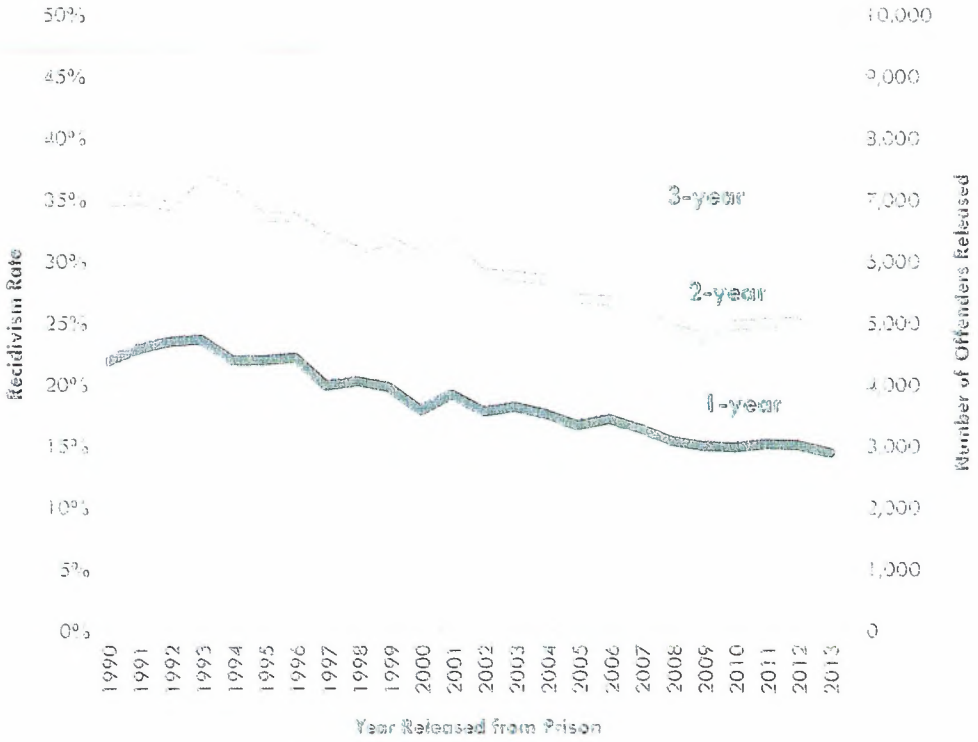
WI DOC considers the offense date the date of the recidivism event. Offenders are often not apprehended and convicted until many years after an offense occurs. WI DOC does not obtain data for an offense until a court sentences an offender to WI DOC custody or supervision. This means that historical recidivism rates can change depending on when the analysis is done. For example, if an offender was released from prison in 1995 and committed an offense in 1996, but was not arrested, convicted, and sentenced until 2011, the recidivism rate for 1995 releases as calculated in 2010 would not count the offender as a recidivist. However, when the rate was calculated again in 2012, the offender would be counted as a recidivist for the 1995 release cohort. Therefore, it is important to note that for this reason, recidivism rates reported in the last *Recidivism after Release from Prison* report may differ slightly from rates in the present report.

This report updates recidivism rates previously presented in the June 2014 *Recidivism after Release from Prison* report. More specifically, rates for additional release years are reported for overall trends in recidivism rates, and for recidivism rates by gender, age at release, race, time to recidivism event, and length of prison stay. The present report also includes new data on recidivism rates broken down by risk to reoffend, offenders' original offense types (violent, property, etc.), and offense type specialization.

Release from Prison Recidivism Rates

Recidivism Rate Trends

The figure below shows recidivism rates for releases from prison beginning in 1990, by release year and follow-up period. Overall, recidivism rates have significantly decreased since 1990, with the three-year rate decreasing by 27.2% (11.7 percentage points) from 1990 to 2011. In the last several years recidivism rates have remained relatively stable, with a slight increase in the two- and three-year rates, and a slight decrease in the one-year rate since 2009. Recidivism rates are calculated at one, two, and three years post-release and are cumulative (meaning that the longer follow-up periods include all instances of recidivism from the shorter follow-up periods).[1]



Recidivism Trends for Select Release Years*

	1-Year Follow-up			2-Year Follow-up			3-Year Follow-up		
Release Year	Total Releases**	Recidivists***		Total Releases	Recidivists		Total Releases	Recidivists	
1990	2,841	621	21.9%	2,834	986	34.8%	2,828	1,215	43.0%
1995	4,943	1,087	22.0%	4,934	1,659	33.6%	4,920	2,026	41.2%
2000	7,161	1,283	17.9%	7,129	2,174	30.5%	7,120	2,820	39.6%
2005	8,604	1,438	16.7%	8,567	2,310	27.0%	8,534	2,908	34.1%
2011	7,689	1,167	15.2%	7,647	1,908	25.0%	7,612	2,379	31.3%
2012	7,521	1,134	15.1%	7,486	1,881	25.1%	—	—	—
2013	7,661	1,109	14.5%	—	—	—	—	—	—

* See Table 1 in Appendix B (page 20) for a table including all release years.

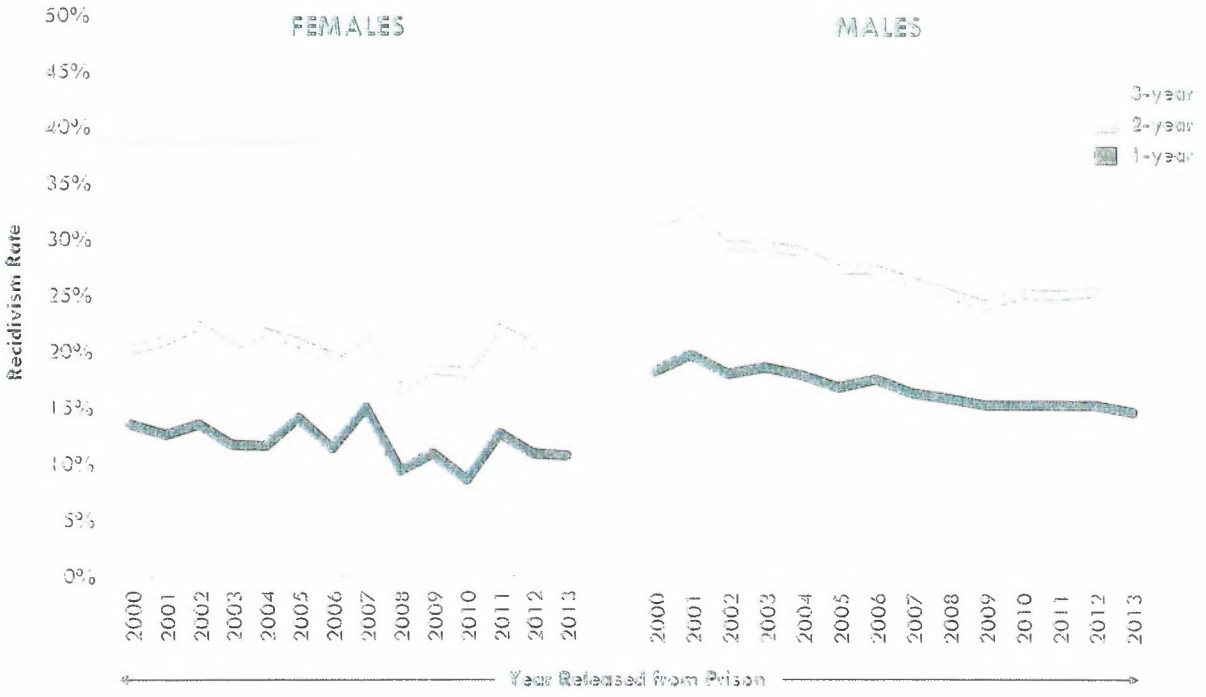
** Total release numbers may differ from those in past years' reports. Data sets are re-run for every new report, and numbers may change slightly due to corrections in data entry regarding release dates or release types for past years.

*** Recidivism rates may differ slightly from those in past reports due to recent convictions and sentences to WI DOC for offenses that occurred many years before the offender was apprehended. See Recidivism Event subsection of Appendix A (pages 17-18) for a more detailed explanation.

[1] *Offenders who died within the timeframe of each specified follow-up period were removed from each cohort prior to recidivism rate calculations. This resulted in slightly different numbers of offenders released and recidivists for each follow-up period for each given release year.*

Recidivism Rates by Gender

Male offenders recidivated at a higher rate than female offenders for every release year and follow-up period. The average recidivism rate for males released between 2000 and 2011 (with a three-year follow-up period) was 35.3% while for females it was 26.1%. Male offender recidivism rates followed the same pattern as the overall trend for WI DOC recidivism rates. However, the trend for females was less consistent. This is likely due to the comparatively small number of female offenders released each year (see table below). Within a small release cohort, slight variations in the number of recidivists can cause the recidivism rate to fluctuate more so than within a large release cohort.



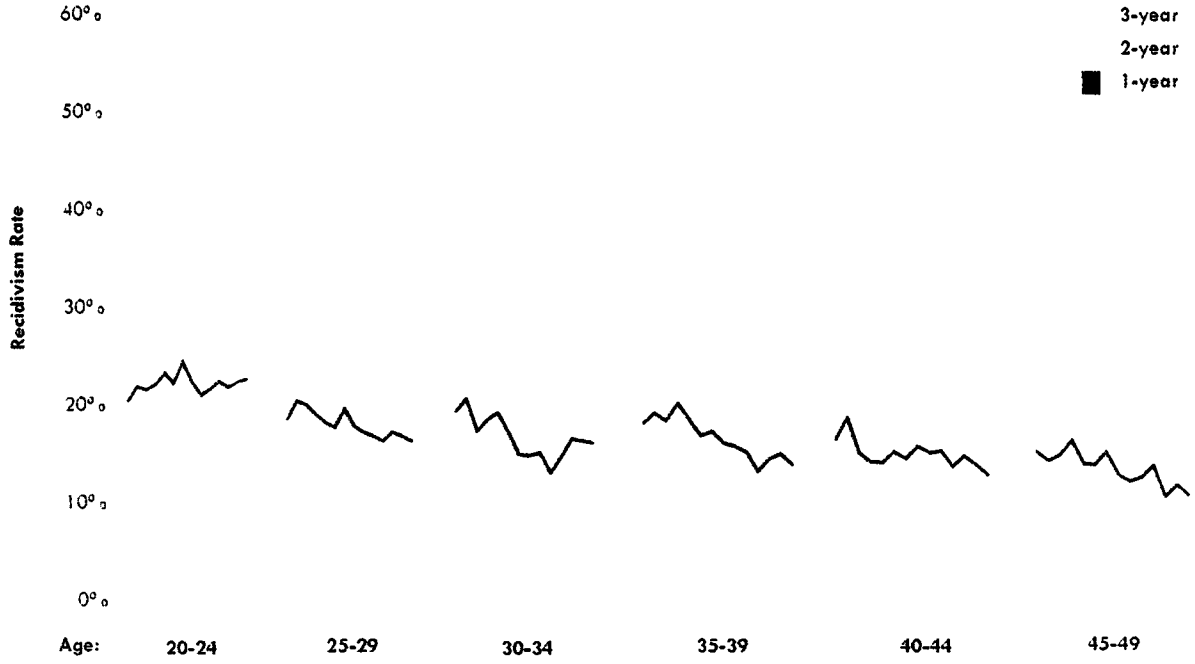
Recidivism Rates by Gender: 3-Year Follow-up*

	Females			*Males*		
Release Year	Total Releases	Recidivists		Total Releases	Recidivists	
2000	682	187	27.4%	6,438	2,633	40.9%
2001	663	187	28.2%	6,200	2,514	40.5%
2002	633	186	29.4%	6,888	2,558	37.1%
2003	672	171	25.4%	7,184	2,718	37.8%
2004	705	204	28.9%	7,611	2,792	36.7%
2005	729	203	27.8%	7,805	2,705	34.7%
2006	695	165	23.7%	7,677	2,656	34.6%
2007	677	183	27.0%	7,844	2,636	33.6%
2008	775	172	22.2%	8,317	2,637	31.7%
2009	690	163	23.6%	7,981	2,512	31.5%
2010	635	146	23.0%	7,833	2,579	32.9%
2011	625	164	26.2%	6,987	2,215	31.7%

* See Table 2 in Appendix B (page 21) for table including all follow-up periods.

Recidivism Rates by Age at Release

Younger offenders exhibited consistently higher recidivism rates than older offenders. Offenders aged 20 to 29 represented the largest number of releases and recidivists for all follow-up years. Recidivism rates for those younger than 20 and older than 59 are not reported due to the small number of offenders in each category.[2] For links to complete tables of recidivists by age at release click here.



Recidivism Rates by Age for Select Release Years: 3-Year Follow-up

	2000			2011		
Age Category	Total Releases	Recidivists		Total Releases	Recidivists	
19 and Under	297	157	---	100	54	---
20-24	1,683	756	44.9%	1,231	512	41.6%
25-29	1,388	558	40.2%	1,674	582	34.8%
30-34	1,249	520	41.6%	1,220	386	31.6%
35-39	1,152	432	37.5%	924	271	29.3%
40-44	729	240	32.9%	893	239	26.8%
45-49	341	108	31.7%	714	175	24.5%
50-54	157	37	---	497	111	22.3%
55-59	76	8	---	219	39	---
60-64	24	1	---	90	7	---
65 or Older	24	3	---	50	3	---

[2] *A sub-group of offenders must make up at least five percent of the total release cohort for recidivism rates to be reported. Recidivism rates for very small populations can be misleading as slight changes in numbers of recidivists can produce large changes in recidivism rates.*

Recidivism Rates by Race

Recidivism rates for Black and White offenders decreased between 2000 and 2011, with the gap between the two groups narrowing to just one percentage point in 2011. This is the smallest difference in recidivism rates between Black and White offenders in the reporting period (the largest gap was 7.6 percentage points for offenders released in 2002). Recidivism rates for American Indian/Alaskan Native and Asian or Pacific Islander offenders are not reported due to the small number of offenders in each category.[3] Of those offenders released in 2011, 650 reported Hispanic ethnicity, and of those, 27.2% recidivated within three years (offenders in any race category can also be Hispanic).

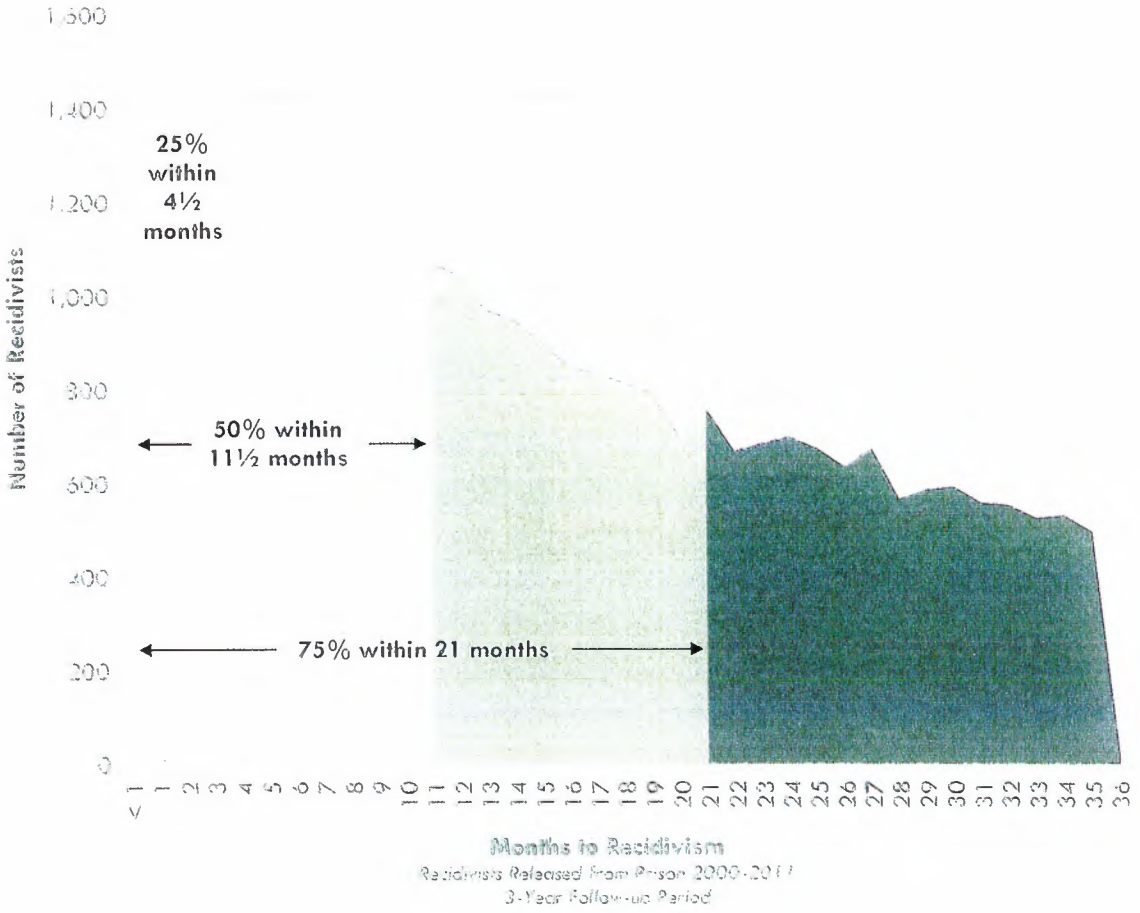
Recidivism Rates by Race: 3-Year Follow-up*

	American Indian/ Alaskan Native			*Asian or Pacific Islander*			*Black*			*White*		
Release Year	Total Releases	Recidivists		Total Releoses	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists	
2000	229	107	---	34	9	---	3,829	1,614	42.2%	3,014	1,087	36.1%
2001	246	121	---	33	5	---	3,441	1,424	41.4%	3,134	1,150	36.7%
2002	264	112	---	39	8	---	3,722	1,491	40.1%	3,491	1,133	32.5%
2003	250	114	---	43	11	---	3,852	1,509	39.2%	3,707	1,255	33.9%
2004	298	140	---	51	15	---	3,873	1,480	38.2%	4,084	1,361	33.3%
2005	314	137	---	65	17	---	3,978	1,424	35.8%	4,155	1,329	32.0%
2006	318	133	---	49	10	---	3,906	1,391	35.6%	4,081	1,287	31.5%
2007	322	129	---	63	18	---	3,898	1,311	33.6%	4,223	1,359	32.2%
2008	357	141	---	51	15	---	4,036	1,301	32.2%	4,634	1,351	29.2%
2009	335	129	---	62	14	---	3,768	1,187	31.5%	4,472	1,345	30.1%
2010	321	140	---	57	10	---	3,602	1,190	33.0%	4,468	1,385	31.0%
2011	320	144	---	54	12	---	3,142	984	31.3%	4,088	1,238	30.3%

[3] *A sub-group of offenders must make up at least five percent of the total release cohort for recidivism rates to be reported. Recidivism rates for very small papulations can be misleading as slight changes in numbers of recidivists can produce large changes in recidivism rates.*

Time to Recidivism Event

The graph below displays the timeframe in which recidivists committed new offenses. The majority of offenders who recidivated within a three-year follow-up period did so less than two years after being released. Twenty-five percent of recidivists released between 2000 and 2011 committed an offense within 4.5 months, 50% did so within 11.5 months, and 75% committed an offense within 21 months of their release from prison. For a link to a complete table of recidivists by time to recidivism event click here.



Recidivism Rates by Length of Prison Stay

Of the offenders released in 2011, those with a prison stay of one year or less prior to release had the highest recidivism rates compared to all other lengths of stay. For longer lengths of stay, the recidivism rates were progressively lower, and those offenders who spent five or more years in prison prior to release had the lowest recidivism rates.

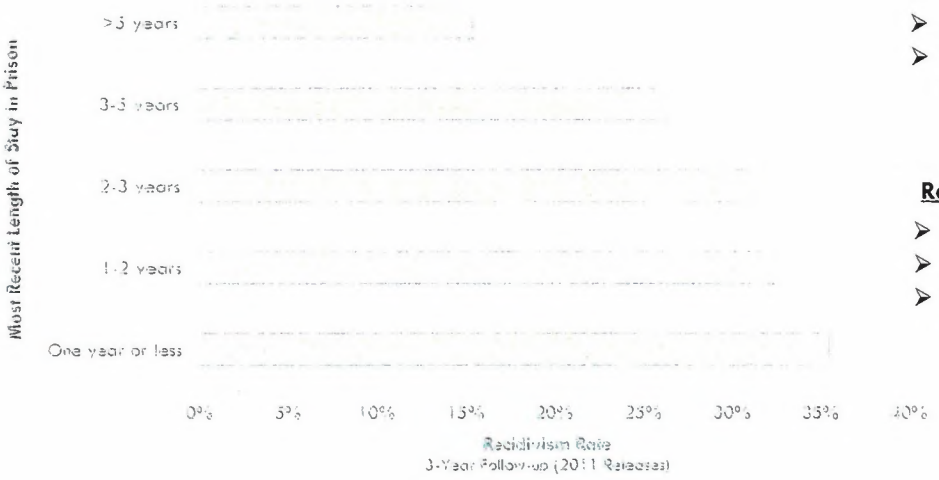
More than half (54.0%) of the offenders released from prison stays of one year or less were released following admissions for revocations; therefore short lengths of stay do not necessarily indicate short overall sentences (the remaining short lengths of stay were likely due to jail credit). One possible contributor to the differences in recidivism rates between offenders released from shorter and longer lengths of stay could be the larger proportion of sex offenders released from longer lengths of stay (24.4% of those released from a stay of five or more years had active sex offenses compared to 6.5% of those released from a length of stay of one year or less). Wisconsin data shows that recidivism rates for sex offenders are generally much lower than rates for other types of offenders (for more information see the Sex Offender Recidivism after Release from Prison Report). The ages of offenders in each length of stay category could also contribute to the differences in recidivism rates; offenders age 40 or older made up 27.3% of those released from lengths of stay of one year or less, but made up 38.3% of those released from lengths of stay of more than five years. See Appendix B (Table 3, page 22) for a complete table of recidivism rates by length of prison stay.

Releases with stays > 5 years

- 24.4% had active sex offenses
- 38.3% were age 40 or older
- 12.2% were originally admitted for revocation only

Releases with stays 1 year or less

- 6.5% had active sex offenses
- 27.3% were age 40 or older
- 54.0% were originally admitted for revocation only



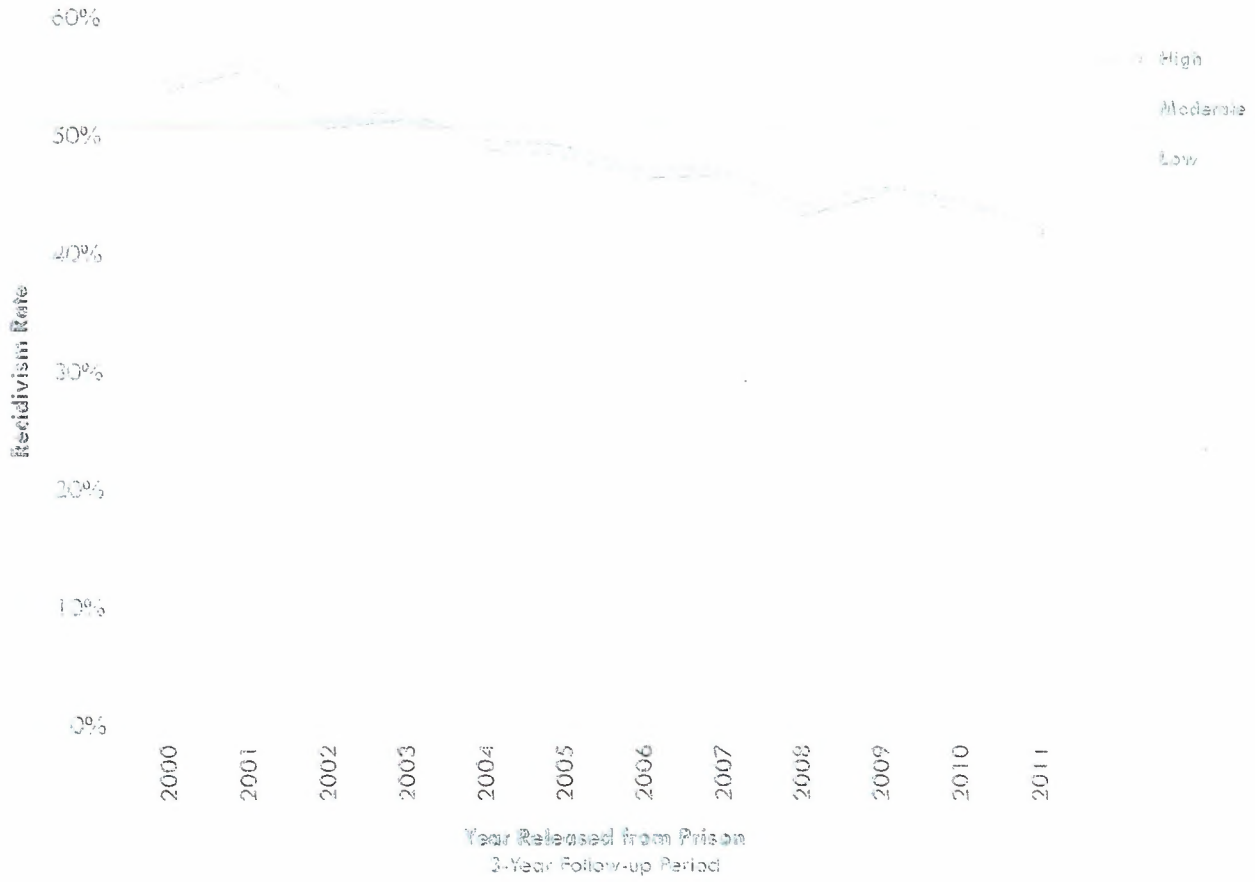
Recidivism Rates by Length of Prison Stay: 2011 Releases, 3-Year Follow-up

Length of Stay in Prison	*Total Releases*	*Recidivists*	
One year or less	2,482	884	35.6%
1-2 years	2,586	846	32.7%
2-3 years	1,053	329	31.2%
3-5 years	786	209	26.6%
>5 years*	705	111	15.7%

* Average Length of Stay = 9.2 years (Minimum = 5.1 years; Maximum = 28.9 years)

Recidivism Rates by Risk Level

Offenders identified as high risk to recidivate (using a risk proxy tool; see Appendix A, page 18 for a description of the tool) had consistently higher recidivism rates than those identified as moderate and low risk. Moderate risk offenders also had consistently higher recidivism rates than low risk offenders. Recidivism rates for moderate and low risk offenders decreased slightly over the report period while recidivism rates for high risk offenders decreased more sharply between 2000 and 2011 (12.1 percentage points). See Appendix B (Table 4, page 23) for a complete table of recidivism rates by risk level.



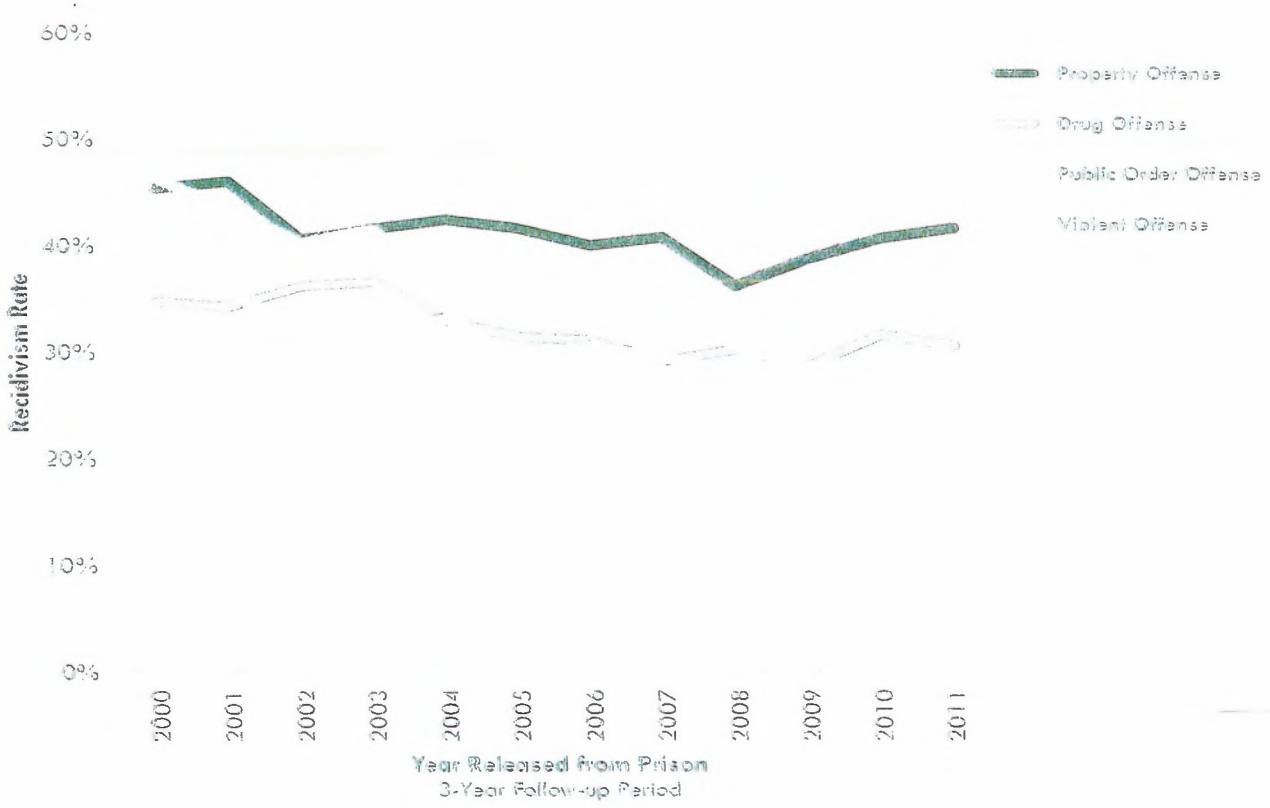
Recidivism Rates by Risk Level for Select Release Years: 3-Year Follow-up*

	2000			2006			2011		
Risk Level	Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists	
High Risk	2,505	1,356	54.1%	2,323	1,088	46.8%	1,632	685	42.0%
Moderate Risk	2,802	1,075	38.4%	3,719	1,270	34.1%	3,752	1,280	34.1%
Low Risk	1,812	388	21.4%	2,324	461	19.8%	2,222	411	18.5%

* See Table 4 in Appendix B (page 23) for a table including all release years.

Recidivism Rates by Original Offense Type

The graph below shows recidivism rates for offenders released between 2000 and 2011, by the most serious offense committed that led to their original incarceration (note that recidivists did not necessarily commit the same type of offense as the original commitment offense). Those offenders incarcerated for property offenses demonstrated the highest recidivism rates and those incarcerated for violent offenses demonstrated the lowest. Recidivism rates for those originally incarcerated for public order offenses decreased significantly (18 percentage points) between 2000 and 2011. See Appendix B (Table 5, page 24) for a complete table of recidivism rates by offense type.



The table below shows the percentage of offenders in each offense type category who were designated low, moderate, or high risk to recidivate at the time of their release. Notably, the largest proportions of high risk offenders were those in the property and drug offense categories (those offenders with the highest recidivism rates). The violent and public order offense categories contained the largest proportions of low risk offenders (and the lowest recidivism rates).

Most Serious Offense from Original Incarceration by Risk Level (2011)
Total Number of Releases in Each Category

Offense Type Prior to Release	*Risk Level* Low Risk		Moderate Risk		High Risk		Total	
	N	%	*N*	%	*N*	%	*N*	%
Violent Offense	890	28.9%	1,579	51.2%	613	19.9%	3,082	100.0%
Property Offense	373	22.0%	873	51.4%	453	26.7%	1,699	100.0%
Drug Offense	345	23.7%	752	51.6%	359	24.7%	1,456	100.0%
Public Order Offense	609	44.9%	543	40.0%	205	15.1%	1,357	100.0%

Offenses were categorized based on the Association of State Correctional Administrators (ASCA) Performance-Based Measures System (PBMS) standards (see Appendix A, page 19 for more information). To provide an example of the types of offenses in each category, the table below shows the top five offenses in each category for offenders in the 2011 release cohort.

Most Common Offenses in Each Offense Type Category*

Violent Offense		Property Offense		Drug Offense		Public Order Offense	
Statute Description	N	Statute Description	N	Statute Description	N	Statute Description	N
2nd Degree Sexual Assault of Child	378	Burglary-Building or Dwelling	728	Manufacture/Deliver Cocaine (≤1g)	168	Operating while under Influence (5th or 6th)	547
Armed Robbery	289	Forgery-Uttering	163	Possess. with Intent.-Cocaine (>1-5g)	126	Possession of Firearm by Felon	176
Substantial Battery-Intend Bodily Harm	213	Drive or Operate Vehicle w/o Consent	117	Manufacture/Deliver Cocaine (>1-5g)	91	Failure to Support Child (120 Days+)	88
1st Degree Sexual Assault of Child	176	Misappropriate ID Info - Obtain Money	76	Possess w/Intent-Cocaine (>5-15g)	86	Bail Jumping-Felony	83
Battery	167	Theft-Movable Property (≤$2500)	58	Possess w/Intent-THC (≤200 grams)	72	Vehicle Operator Flee/Elude Officer	57

*Data from 2011 release cohort, 3-year follow-up period. Only the top five most common offenses are listed as an example of the offenses in each offender type category.

Offense Type Specialization

Offense type specialization is the tendency for offenders to be reconvicted for an offense type that is the same as the one they were originally incarcerated for. The table below displays the percentage of recidivists in each original offense type category who committed new offenses in the same category after release from prison. The circled values represent the proportion of recidivists who committed new offenses in the same category as the offense that led to their original incarceration. Overall, offense type specialization was most evident for public order offenses, with 52.6% of recidivists who were originally incarcerated for a public order offense committing another public order offense. This is partly accounted for by specialization among OWI offenders (a subset of the public order offense category), as more than half (58.2%) of the OWI offenders who recidivated committed another OWI offense. Specialization was least evident for violent offenses. Of those recidivists originally incarcerated for violent offenses, 28.3% committed another violent offense. Property and drug offenses fell in the middle with just under half (46.9%) of the recidivists incarcerated for property offenses committing another property offense, and 43.9% of the recidivists incarcerated for drug offenses committing another drug offense.

Percent of Recidivists Convicted for the Same Offense Type as Their Original Incarceration Offense
2011 Releases, 3-Year Follow-up (*recidivists only*)

Original Incarceration Offense Type	*Post-Release Recidivism Offense Type*			
	Violent Offense	Property Offense	Drug Offense	Public Order Offense
Violent Offense	28.3%	18.8%	16.0%	36.9%
Property Offense	16.0%	46.9%	13.3%	23.9%
Drug Offense	17.9%	12.3%	43.9%	25.8%
Public Order Offense	21.4%	15.1%	10.9%	52.6%

Appendix A

Definition of Recidivism

The WI DOC defines recidivism as a new offense resulting in a conviction and sentence to the WI DOC. This definition of recidivism is based on a rather straightforward, yet fundamental principle in defining public safety. That is, generally, when members of the public are asked what they expect of an offender who is placed on probation supervision, or released from prison following a conviction for a crime, many simply respond "...that they do not commit another crime." Therefore, the WI DOC method for calculating recidivism rates centers on an offense date for which the offender, through full due process of the legal system, is ultimately convicted of another crime. These events can be substantiated through documentation of actions taken by the court (e.g., a Judgment of Conviction).

A notable limitation to fully applying this principle to calculating recidivism rates involves not having full access to data containing information on court dispositions that do not come under the custody or supervision of the WI DOC (see bulleted list at right). As additional data on municipal violations, fines, jail-only sentences, or convictions resulting in sentences in other state or federal correctional systems becomes available to the WI DOC, and can meet stringent validation standards, the Department will expand the scope of its recidivism calculations to include these documented incidents of new criminal behavior. Under current circumstances, the Department can only measure what it is able to count and verify as accurate. Despite this limitation, it is important to note that the WI DOC uses the same methodology to calculate recidivism rates for all past recidivism rates, and will continue to use this methodology for all future rates, allowing for consistent reporting of recidivism trends over time.

Wisconsin recidivism rate calculations do not include:

- persons convicted/sentenced in another state
- persons convicted/sentenced in Federal court
- persons convicted/sentenced in another country
- persons arrested with no conviction
- persons charged with no conviction
- persons with municipal ordinance violations
- persons convicted of a crime that results in a court disposition that does not lead to custody or supervision under the WI DOC
- persons admitted to jail or prison without a new conviction
- persons who have not been apprehended or convicted of a new crime

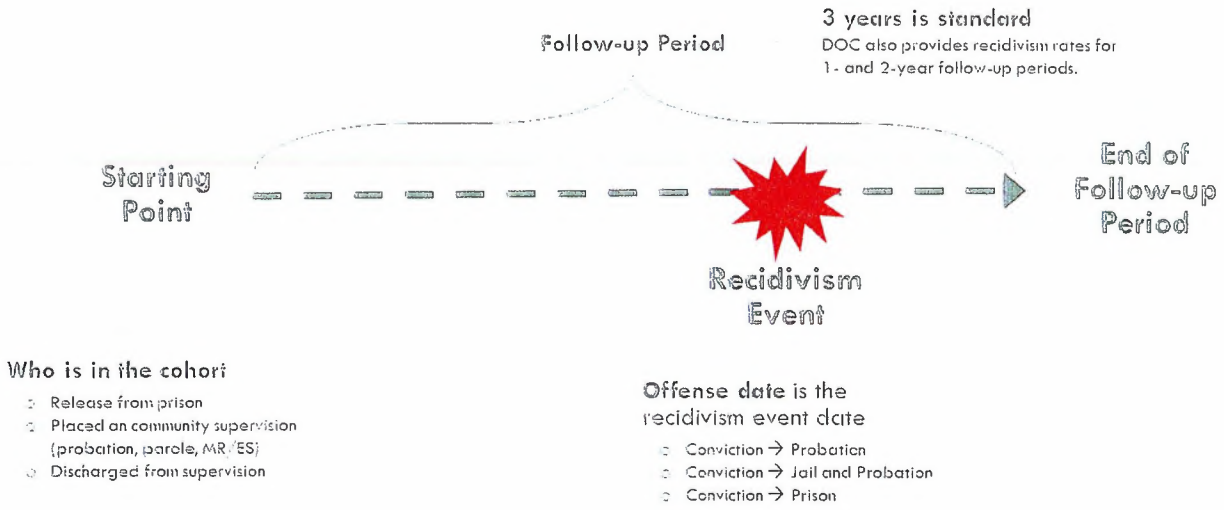
Methodology

There are three key components involved in recidivism rate calculations:

- **Starting point** – This defines the cohort, or the group of offenders being examined to see if they recidivated. For example, offenders released from prison in 2007, or offenders beginning supervision in 2005.

- **Follow-up period** – Timeframe in which an offender has the opportunity to engage in a recidivism event. The standard timeframe used for follow-up periods is three years, but other follow-up periods (one, two, five, ten years) are common as well. To accurately measure recidivism rates all offenders in the cohort must have the same amount of follow-up time.

- **Recidivism event** – The measure that identifies whether and when recidivism occurred. Some commonly used recidivism events are arrest, new conviction, new prison sentence, and admission to prison. WI DOC defines a recidivism event as an offense that results in a new conviction and sentence to WI DOC custody or supervision. The WI DOC uses the date of the offense that resulted in the conviction as the date of the recidivism event. Note that the conviction and sentence can occur after the end of an offender's follow-up period.



It is important to note what starting point, follow-up period, and recidivism event are being used when comparing results from different recidivism studies, as rates are not comparable when any one of these components are different.

Starting Point

For this report, offenders released from a WI DOC facility between 1990 and 2013 were included in the various release year cohorts with the following exception: offenders who were released from a temporary stay in a WI DOC facility, such as a hold, an alternative to revocation (ATR), or an alternative to prison (ATP) were not included in the release cohorts. Only those offenders who were released from a period of incarceration due to completing the confinement portion of their sentence or revocation were included in each release cohort.

An offender was only counted once in any given cohort. If an offender was released more than once during a calendar year, the last release in the year was used as the offender's starting point for his or her follow-up period.

Follow-up Period

Follow-up periods for a given starting point cohort were the same for every offender in the cohort. Meaning if an offender was released from prison on January 1, 1995, he was followed until December 31, 1997 for a three-year follow-up period, while an offender released on December 31, 1995 was followed until December 30, 1998.

Offenders who died within the timeframe of each specified follow-up period were removed from the starting point cohort. For example, an offender who died one and a half years after being released would not be included in the two-year follow-up cohort, because he died before the two years were complete. However, this offender would still be included in the one-year follow-up cohort, because he did not die until after he had been in the community for the entire one year following his release. The WI DOC is only able to track the deaths of offenders who are under the supervision of the WI DOC at the time of their deaths. Therefore offenders who died and were not under WI DOC custody or supervision at that time remain in the cohort.

Recidivism Event

An offender was considered a recidivist if he or she committed a new crime and was convicted and sentenced to WI DOC custody or supervision within his or her follow-up period. Although an offender must be convicted and sentenced to WI DOC custody or supervision to be considered a recidivist, it is the date of the actual offense that is considered the date of the recidivism event, not the date of conviction, sentencing, or admission to prison. Therefore, the offense itself must have occurred during the offender's follow-up period. If an offender had multiple offense dates in a given follow-up period the earliest offense date was counted as the recidivism event. An offender can only be counted as a recidivist once within any given cohort.

For some older data, offense dates were missing but corresponding sentence dates were available. Estimated offense dates were calculated for all missing offense dates using the following equation:

$$\text{Estimated Offense Date} = \text{Sentence Date} - 209 \text{ days}^*$$

*Median number of days between offense and sentence dates based on sentence dates that occurred between January 1, 2006 and December 31, 2011

If an estimated offense date fell within an offender's follow-up period he or she was counted as a recidivist.

WI DOC's methodology considers the date of an offense as the date of the recidivism event. Often an offender is not arrested, tried, convicted, and sentenced until years after committing an offense. The WI DOC does not obtain data for that offense until the time that the offender is sentenced to custody or supervision under the Department. Therefore, past recidivism rates can change depending on when data are analyzed. For example, if an offender released in 1995 was arrested, convicted, and sentenced in 2011 for an offense committed in 1996, a recidivism rate calculated in 2010 for a 1995 starting point cohort would not count the offender as a recidivist. However, if that rate was calculated again in 2012, the offender would be considered a recidivist for the 1995 starting point cohort.

Even when an offender is arrested, tried, convicted, and sentenced shortly after the occurrence of an offense, the WI DOC still will not obtain offense data until 209 days (on average) after the offense. Therefore, recidivism rates calculated by the WI DOC provide for a minimum one-year lag time to account for the time between apprehension for a new crime and subsequent court disposition. This allows the Department to capture data on offenders who committed crimes during the last year of their follow-up periods, but who were not convicted and sentenced until sometime after the follow-up period. For example, a report of 2013 release from prison recidivism rates with a three-year follow-up period would not be published until after 2017, allowing for the three-year follow-up period (ending in 2016) and the one-year lag time (ending in 2017).

Furthermore, WI DOC is only able to calculate recidivism rates based on the data that is available to the Department. Therefore, offenses that result in fines or convictions to only county jail are not counted as recidivism events because the WI DOC is not notified when offenders receive these types of sentences or court dispositions. At this point in time, the WI DOC is only able to obtain and validate data on offenders who are under WI DOC custody or supervision.

Percentage Change in Recidivism Rate

The percentage change in the recidivism rate reported in the executive summary and on page six is calculated by dividing the percentage-point change by the initial recidivism rate and multiplying the resulting number by 100. This yields the percentage by which the recidivism rate changed. For example, in 1990 the recidivism rate was 43.0%, and it decreased 11.7 percentage points to 31.3% in 2011. Therefore, the resulting change in the recidivism rate was 27.2%.

Age at Release

An offender's age at release was calculated as the number of years between the offender's date of birth and his or her release date. The offender's age was rounded down, meaning that if 25 years and 300 days had passed between an offender's date of birth and release date, that offender was identified as being 25 years old.

Time to Recidivism Event

Time to recidivism event was calculated as the number of months between the offender's date of release and the date of his or her recidivism offense. The number of months was rounded down, such that if the time between the release and the recidivism offense was two months and 27 days, the offender was categorized as having recidivated in two months from his or her release.

Length of Prison Stay

Length of prison stay was calculated as the number of months between the offender's admission date and release date. The category of 1-2 years includes offenders whose lengths of stay were 24 months; the 2-3 year category includes lengths of stay of 36 months; and the 3-5 year category includes lengths of stay of 60 months.

Risk Level

Offender risk level was calculated using the WI DOC version of a proxy risk screening instrument (see Bogue, Woodward and Joplin, 2006) in order to capture a complete historical analysis of risk level. Though WI DOC currently uses the COMPAS Risk Assessment to capture a more detailed picture of offender criminogenic risk, the measure has only been in use since mid-2012 and would provide incomplete recidivism-by-risk trends. The WI DOC proxy risk instrument incorporates three items to broadly estimate general risk for recidivism: 1) age at release from prison, 2) age at first sentence to WI DOC custody, and 3) number of prior felony convictions in Wisconsin. Scores from the proxy risk screening instrument are used to define three overall risk categories: low, moderate, and high.

Original Offense Type and Offense Type Specialization

Offense type categories were based on the Association of State Correctional Administrators (ASCA) Performance-Based Measures System (PBMS) standards. While the ASCA standards were followed as closely as possible in the categorization of offenses, supplementary rules were developed to aid in categorizing statutes that did not clearly fit into one category or another. Offense categorization methodology is available upon request.

Recidivism rates by original offense type were determined using the most serious active offense at the time of an offender's release from prison.

For offense type specialization, if an offender committed offenses on multiple dates within his or her follow-up period, the first offense date was selected as the date on which the offender became a recidivist. To determine the offender's most serious recidivist offense, the offenses committed on that offense date only were examined.

Recidivism vs. Reincarceration

Reincarceration rates are also commonly reported by corrections agencies, and are sometimes confused with recidivism rates. A reincarceration rate represents the percentage of offenders released from prison who then return to prison for a revocation, a revocation with a new sentence, or a new sentence within a specified follow-up period. The WI DOC tracks reincarceration rates as a means to report on prison bed utilization and population projections, and as an additional outcome measure, but not as a means to calculate recidivism rates.

Appendix B

Table 1. Recidivism Trends 1990-2013

Release Year	1-Year Follow-Up			2-Year Follow-Up			3-Year Follow-Up		
	Total Releases*	Recidivists**		Total Releases	Recidivists		Total Releases	Recidivists	
1990	2,841	621	21.9%	2,834	986	34.8%	2,828	1,215	43.0%
1991	3,605	827	22.9%	3,593	1,258	35.0%	3,581	1,530	42.7%
1992	3,649	857	23.5%	3,640	1,257	34.5%	3,631	1,542	42.5%
1993	4,274	1,011	23.7%	4,261	1,572	36.9%	4,252	1,929	45.4%
1994	4,049	892	22.0%	4,035	1,440	35.7%	4,018	1,755	43.7%
1995	4,943	1,087	22.0%	4,934	1,659	33.6%	4,920	2,026	41.2%
1996	4,840	1,074	22.2%	4,819	1,617	33.6%	4,808	1,991	41.4%
1997	5,009	998	19.9%	4,989	1,595	32.0%	4,979	1,969	39.5%
1998	4,780	969	20.3%	4,771	1,476	30.9%	4,760	1,799	37.8%
1999	5,183	1,025	19.8%	5,176	1,639	31.7%	5,171	2,083	40.3%
2000	7,161	1,283	17.9%	7,129	2,174	30.5%	7,120	2,820	39.6%
2001	6,901	1,323	19.2%	6,876	2,164	31.5%	6,863	2,701	39.4%
2002	7,550	1,344	17.8%	7,539	2,188	29.0%	7,521	2,744	36.5%
2003	7,921	1,438	18.2%	7,883	2,270	28.8%	7,856	2,889	36.8%
2004	8,376	1,471	17.6%	8,342	2,376	28.5%	8,316	2,996	36.0%
2005	8,604	1,438	16.7%	8,567	2,310	27.0%	8,534	2,908	34.1%
2006	8,451	1,450	17.2%	8,407	2,253	26.8%	8,372	2,821	33.7%
2007	8,572	1,407	16.4%	8,543	2,217	26.0%	8,521	2,819	33.1%
2008	9,151	1,412	15.4%	9,112	2,243	24.6%	9,092	2,809	30.9%
2009	8,741	1,312	15.0%	8,704	2,072	23.8%	8,671	2,675	30.8%
2010	8,554	1,276	14.9%	8,499	2,104	24.8%	8,468	2,725	32.2%
2011	7,689	1,167	15.2%	7,647	1,908	25.0%	7,612	2,379	31.3%
2012	7,521	1,134	15.1%	7,486	1,881	25.1%	—	—	—
2013	7,661	1,109	14.5%	—	—	—	—	—	—

* Total release numbers may differ from those in past years' reports. Data sets are re-run for every new report, and numbers may change slightly due to corrections in data entry regarding release dates or release types for past years.

** Recidivism rates may differ slightly from those in past reports due to recent convictions and sentences to WI DOC for offenses that occurred many years before the offender was apprehended. See Recidivism Event subsection of Appendix A (pages 17 18) for a more detailed explanation.

Table 2. Recidivism Rates by Gender 2000-2013

	1-Year Follow-Up						2-Year Follow-Up						3-Year Follow-Up					
	Females			*Males*			*Females*			*Males*			*Females*			*Males*		
Release Year	Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists	
2000	682	92	13.5%	6,479	1,191	18.4%	682	138	20.2%	6,447	2,036	31.6%	682	187	27.4%	6,438	2,633	40.9%
2001	667	84	12.6%	6,234	1,239	19.9%	665	139	20.9%	6,211	2,025	32.6%	663	187	28.2%	6,200	2,514	40.5%
2002	638	86	13.5%	6,912	1,258	18.2%	636	142	22.3%	6,903	2,046	29.6%	633	186	29.4%	6,888	2,558	37.1%
2003	678	79	11.7%	7,243	1,359	18.8%	677	138	20.4%	7,206	2,132	29.6%	672	171	25.4%	7,184	2,718	37.8%
2004	707	82	11.6%	7,669	1,389	18.1%	705	153	21.7%	7,637	2,223	29.1%	705	204	28.9%	7,611	2,792	36.7%
2005	732	103	14.1%	7,872	1,335	17.0%	730	152	20.8%	7,837	2,158	27.5%	729	203	27.8%	7,805	2,705	34.7%
2006	701	80	11.4%	7,750	1,370	17.7%	697	136	19.5%	7,710	2,117	27.5%	695	165	23.7%	7,677	2,656	34.6%
2007	679	102	15.0%	7,893	1,305	16.5%	678	144	21.2%	7,865	2,073	26.4%	677	183	27.0%	7,844	2,636	33.6%
2008	779	73	9.4%	8,372	1,339	16.0%	777	129	16.6%	8,335	2,114	25.4%	775	172	22.2%	8,317	2,637	31.7%
2009	695	76	10.9%	8,046	1,236	15.4%	692	127	18.4%	8,012	1,945	24.3%	690	163	23.6%	7,981	2,512	31.5%
2010	641	55	8.6%	7,913	1,221	15.4%	637	115	18.1%	7,862	1,989	25.3%	635	146	23.0%	7,833	2,579	32.9%
2011	631	80	12.7%	7,058	1,087	15.4%	627	138	22.0%	7,020	1,770	25.2%	625	164	26.2%	6,987	2,215	31.7%
2012	596	65	10.9%	6,925	1,069	15.4%	590	121	20.5%	6,896	1,760	25.5%	—	—	—	—	—	—
2013	607	65	10.7%	7,054	1,044	14.8%	—	—	—	—	—	—	—	—	—	—	—	—

Table 3. Recidivism Rates by Length of Prison Stay 2000-2011: 3-Year Follow-up

	One Year or Less			1-2 Years			2-3 Years			3-5 Years			>5 Years		
Release Year	Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists	
2000	2,654	1,121	42.2%	2,064	829	40.2%	1,103	421	38.2%	807	307	38.0%	492	142	28.9%
2001	2,467	1,058	42.9%	1,929	751	38.9%	944	350	37.1%	909	342	37.6%	614	200	32.6%
2002	2,685	1,090	40.6%	2,067	758	36.7%	1,042	371	35.6%	942	319	33.9%	785	206	26.2%
2003	2,707	1,131	41.8%	2,283	828	36.3%	1,060	366	34.5%	927	317	34.2%	879	247	28.1%
2004	3,036	1,262	41.6%	2,412	830	34.4%	1,089	385	35.4%	877	290	33.1%	902	229	25.4%
2005	3,157	1,195	37.9%	2,566	901	35.1%	1,137	380	33.4%	865	265	30.6%	809	167	20.6%
2006	3,157	1,196	37.9%	2,479	824	33.2%	1,131	383	33.9%	908	254	28.0%	697	164	23.5%
2007	3,323	1,254	37.7%	2,655	875	33.0%	1,027	344	33.5%	862	234	27 1%	654	112	17.1%
2008	3,325	1,173	35.3%	2,991	918	30.7%	1,140	348	30.5%	877	223	25.4%	759	147	19.4%
2009	3,210	1,163	36.2%	2,746	804	29.3%	1,194	347	29.1%	788	223	28.3%	733	138	18.8%
2010	3,029	1,094	36.1%	2,839	947	33.4%	1,056	320	30.3%	849	225	26.5%	695	139	20.0%
2011	2,482	884	35.6%	2,586	846	32.7%	1,053	329	31.2%	786	209	26.6%	705	111	15.7%

Table 4. Recidivism Rates by Risk Level 2000-2011: 3-Year Follow-up

	High Risk			*Moderate Risk*			*Low Risk*		
Release Year	Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists	
2000	2,505	1,356	54.1%	2,802	1,075	38.4%	1,812	388	21.4%
2001	2,321	1,296	55.8%	2,746	1,030	37.5%	1,794	374	20.8%
2002	2,367	1,207	51.0%	3,138	1,111	35.4%	2,012	424	21.1%
2003	2,380	1,231	51.7%	3,311	1,191	36.0%	2,160	466	21.6%
2004	2,430	1,197	49.3%	3,515	1,269	36.1%	2,371	530	22.4%
2005	2,416	1,179	48.8%	3,707	1,268	34.2%	2,409	460	19.1%
2006	2,323	1,088	46.8%	3,719	1,270	34.1%	2,324	461	19.8%
2007	2,253	1,060	47.0%	3,874	1,259	32.5%	2,393	499	20.9%
2008	2,254	982	43.6%	4,169	1,311	31.4%	2,662	514	19.3%
2009	2,033	922	45.4%	4,121	1,304	31.6%	2,512	444	17.7%
2010	1,911	845	44.2%	4,098	1,372	33.5%	2,453	507	20.7%
2011	1,632	685	42.0%	3,752	1,280	34.1%	2,222	411	18.5%

Table 5. Recidivism Rates by Original Offense Type 2000-2011: 3-Year Follow-up

Release Year	*Violent Offender*			*Property Offender*			*Drug Offender*			*Public Order Offender*		
	Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists		Total Releases	Recidivists	
2000	2,707	976	36.1%	2,217	1,006	45.4%	1,538	534	34.7%	650	301	46.3%
2001	2,634	933	35.4%	2,148	988	46.0%	1,343	460	34.3%	717	312	43.5%
2002	2,917	943	32.3%	2,332	946	40.6%	1,447	523	36.1%	816	328	40.2%
2003	3,096	995	32.1%	2,196	912	41.5%	1,644	601	36.6%	916	380	41.5%
2004	3,092	1,023	33.1%	2,396	1,016	42.4%	1,823	600	32.9%	1,004	357	35.6%
2005	3,047	899	29.5%	2,227	926	41.6%	2,083	654	31.4%	1,174	428	36.5%
2006	3,093	944	30.5%	2,150	859	40.0%	1,975	614	31 1%	1,148	402	35.0%
2007	3,170	934	29.5%	2,167	883	40.7%	1,891	551	29.1%	1,286	448	34.8%
2008	3,351	936	27.9%	2,271	822	36.2%	2,007	607	30.2%	1,453	442	30.4%
2009	3,342	940	28.1%	2,063	799	38.7%	1,733	497	28.7%	1,506	432	28.7%
2010	3,338	965	28.9%	1,954	795	40.7%	1,640	519	31.6%	1,515	443	29.2%
2011	3,084	840	27.2%	1,701	708	41.6%	1,457	446	30.6%	1,358	384	28.3%

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Examining the Effects of Residential Situations and Residential Mobility on Offender Recidivism

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Abstract

Drawing from theories of social control, this study involved an examination of the time-varying effects of six different residential situations and residential mobility on offenders' odds of recidivism during the year immediately following their release from prison. Analyses of data collected on a statewide sample of offenders released under supervision in Ohio generated results favoring a control perspective. Both residential mobility and residential situations such as living with a spouse or parent were relevant for understanding differences among offenders in their odds of recidivism. Stable characteristics of offenders such as gender and prior criminal history were also linked to recidivism.

Keywords

parole, recidivism, offender, social control

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Because of their high recidivism rates, offenders released from prisons contribute significantly to crime rates and state prison populations (Blumstein & Beck, 2005; Rosenfeld, Wallman, & Fornango, 2005; Travis & Lawrence, 2002). Understanding the factors that influence offenders' odds of recidivism can guide the development of practical solutions to the problem (e.g., classification instruments and correctional treatment programs) and inform theories of offender behavior (Committee on Community Supervision and Desistance From Crime, 2008; Travis & Visher, 2005).

Empirical findings from longitudinal studies of offending patterns have underscored the importance of continuity and change in individuals' behavior (see, for example, Committee on Community Supervision and Desistance From Crime, 2008; Laub & Sampson, 2003; Sampson & Laub, 1993). Even though studies of offender recidivism are typically restricted to short intervals of time (e.g., 1 year after release), researchers in this area have recognized the contribution of continuity and change and begun to focus on the potential effects of both time-varying life circumstances, such as offenders' employment or relationship status, and time-invariant offender characteristics, such as offenders' prior record (e.g., MacKenzie & De Li, 2002; Uggen, 2000). These few studies to date have provided evidence that short-term changes in offenders' situations or local life circumstances can influence their odds of offending (Horney, Osgood, & Marshall, 1995; MacKenzie & De Li, 2002; McGloin, Sullivan, Piquero, & Pratt, 2007; Sullivan, McGloin, Pratt, & Piquero, 2006). One potentially relevant, and often varying, life circumstance could be offenders' residential situation (i.e., who they live with). Using a statewide sample of offenders released from prison under postrelease supervision in Ohio, we add to the limited research on offender behavior by examining the effects of different residential situations and residential mobility on recidivism, while controlling for other relevant predictors of recidivism. Drawing from theories of social control, we posit that different residential situations and residential mobility coincide with variation in the level of social control present in offenders' lives. Variation in the level of social control can affect offenders' odds of recidivism.

Theoretical Framework

The focus of this study is on recidivism during the year immediately following offenders' release from prison. Although the recidivism process can occur over a longer period of time (see, for example, Maltz, 1984), examination of the factors associated with recidivism during a restricted period of time can still inform our understanding of the recidivism process (Committee on Community Supervision and Desistance From Crime, 2008; Maruna & Toch, 2005). In addition,

large-scale studies of recidivism have determined that most offenders who recidivate do so within the 1st year after their release (e g , Langan & Levin, 2002), underscoring that this period of offenders' reentry is perhaps the most critical time to understand. Furthermore, determination of the factors that influence offenders' likelihood of recidivism in the short term is of particular relevance to correctional administrators because, in general, they only deal with offenders for a narrow period of time (La Vigne, Thomson, Visher, Kachnowski, & Travis, 2003) In the jurisdiction under examination in this study (Ohio), for example, the majority of offenders are sentenced to postrelease control (PRC, mandatory parole) for 3 years or less. In practice, however, offenders typically serve only 1 to 1 5 years under supervision.[1] Thus, longitudinal studies of offenders who are restricted to short intervals of time can inform theories of offender behavior (e g , desistance) and provide correctional agencies with practical information regarding factors that reflect continuity (i e., static factors) and induce change (i e , dynamic factors) in offender behavior on a more day-to-day basis (see Gendreau, Little, & Goggin, 1996, for a discussion of the practical application of static and dynamic predictors of recidivism)

In this study, we link potential predictors to recidivism using a social control perspective A control perspective is well suited to studying adult offenders because it recognizes continuity and change in individuals' behavior (Laub & Sampson, 2003; Sampson & Laub, 1993). Continuity is reflected by stable differences between individuals in their propensities to offend (Gottfredson & Hirschi, 1990). In contrast, within-individual changes in exposure to institutions of formal and informal social control often induce turning points that can be the triggering events that influence offenders' odds of recidivism (Laub & Sampson, 2003, Sampson & Laub, 1993) Change can be viewed as a long-term process or in the short term as a response to variations in individuals' situations or local life circumstances (Horney et al , 1995, Laub & Sampson, 2003) In this context, the residential situations and related residential stability of offenders released from prison are life circumstances that are likely to affect the degree of social control over offenders' behavior We hypothesize that variations in offenders' residential situations and residential mobility influence their odds of recidivism [2]

Offenders' Residential Situations, Mobility, and Recidivism

The link between offenders' residential situation and offending has been grounded in a social control perspective (Horney et al , 1995, Laub & Sampson, 2003, MacKenzie & De Li, 2002, Sampson & Laub, 1993). For instance, individuals who are married and cohabitating could be less likely to recidivate

because of the direct control of spouses and because marriage can restrict opportunities for recidivism by altering social networks and/or changing daily routines (Horney et al., 1995; Laub & Sampson, 2003; MacKenzie & De Li, 2002; Sampson & Laub, 1993). Compared with individuals who are simply married or living with a boyfriend/girlfriend, individuals who are married and cohabitating may also have a higher level of commitment to their relationship (Holtzworth-Munroe, Smutzler, & Bates, 1997; Stets & Straus, 1989). A greater level commitment to a relationship may influence the quality and level of attachment in the marriage, which can affect offenders' odds of recidivism (Laub, Nagin, & Sampson, 1998; Laub & Sampson, 2003). In support of these ideas, Horney et al. (1995) uncovered that men who were married and cohabitating were less likely to offend, whereas men living with a girlfriend were more likely to offend. Similarly, MacKenzie and De Li (2002) observed that men who were living with their spouse were less likely to commit nondrug crime. In contrast, living with a girlfriend had no effect on this type of offending. Neither living situation had an effect on drug dealing, however.

Sampson and Laub (1993) underscored the importance of family in inhibiting offending during individuals' childhood years. Yet, the potential effects of parents or other relatives have not received much empirical attention within the context of adulthood. This is probably because for most adults relationships with friends and significant others become more important, and familial effects on adult behaviors become less proximate. However, offenders returning from prison are often devoid of social networks and/or ties, and parents and other family members can be (and often are) one of their few available resources that may facilitate successful reentry (Clear, Waring, & Scully, 2005; Visher, Baer, & Naser, 2006; Visher & Courtney, 2007). Living with a parent or other relative may provide indirect control over offenders' behavior because even though the strength of the attachment between parent and child or between family members may weaken during the offender's incarceration, it could also strengthen more quickly than potential attachments between offenders and other prosocial individuals. Parents and other relatives also have a vested interest in seeing their family member succeed, and so they may be willing to assist parole authorities in the supervision (direct control) of the offender. Although it is likely that some offenders' parents are poor and some parents or other relatives exhibit antisocial tendencies themselves, it is also true that even people who are deviant themselves can be good parents and "bad parents" are good parents much of the time (Clear et al., 2005; Uggen, Wakefield, & Western, 2005). In addition, parole authorities often restrict offenders from living with individuals (other than parents and spouses) who are also under supervision or have a criminal history (Glaser, 1969; Petersilia, 2003).

Prosocial ties (such as between an offender and his or her law-abiding relative) can inhibit offending by bringing new resources to the offender and/or altering or expanding social networks (Clear et al., 2005; Uggen et al., 2005) For all these reasons, it is reasonable to expect that offenders who live with their parents or other relatives will be less likely to recidivate.

Parole authorities not only have the power to restrict who offenders live with but also to direct where offenders live. Released offenders can be placed in halfway houses or homeless shelters, or referred to inpatient treatment programs. These referrals or placements can occur as the result of community sanctions for violations of conditions of postrelease supervision or as a part of case-management plans designed to address offenders' reentry needs. Regardless of how offenders are placed in residential programming, involvement in the program can formally control offenders' behavior by structuring their routines, increasing supervision over their behaviors, and limiting opportunities to violate the terms of their release (Petersilia, 2003).

In contrast to offenders who live in the aforementioned residential situations, offenders who are homeless or have absconded are in situations that lack supervision, assistance, and/or prosocial associations. Offenders living in these situational contexts often have fewer ties to conventional others and/or less to lose by deviating from (or further from) supervision. For those offenders in these situations, conformity may be less likely.

Offenders' residential mobility may also influence the level of control over their behavior. The inability to find and maintain stable housing can inhibit the forming of prosocial networks and decrease involvement in conventional activities (Sampson, 1988; Sampson, 1991). Residential instability may also weaken offenders' stake in conformity or attachment to their community (Sampson, 1991, Wooldredge & Thistlethwaite, 2002). Findings from related studies suggest that offenders who move more often are more likely to recidivate (Meredith, Speir, & Johnson, 2007; Visher & Courtney, 2007).

Other Relevant Controls Over Offenders' Behavior

A reliable examination of the effects of different residential situations and residential mobility on recidivism requires consideration of other variables that can be included in a model as statistical controls. These predictors of recidivism might also proxy various aspects of informal control over offenders' behavior. For example, age may be inversely related to recidivism because younger offenders often have fewer conventional relationships and are less likely to be involved in activities reflecting more conformist lifestyles. Studies have revealed support for a negative relationship between age and recidivism (e.g., Gendreau

et al., 1996; Griffin & Armstrong, 2003, MacKenzie, Browning, Skroban, & Smith, 1999; Rosenfeld et al., 2005).

African American offenders (particularly males) may be more likely to recidivate because of the overrepresentation of minority offenders from economically and socially disadvantaged neighborhoods (Rose & Clear, 1998), where feelings of resentment and hostility toward legal authority are pervasive among residents (Anderson, 2001; Sampson & Bartusch, 1998) If African American offenders do not hold much respect for the rules of supervision because they question the legitimacy of those rules, recidivism may be more likely. Evidence regarding the effect of offenders' race, however, is mixed. (see, for example, DeJong, 1997; Gendreau et al., 1996; Griffin & Armstrong, 2003; Huebner, Varano, & Bynum, 2007; MacKenzie & De Li, 2002; Rosenfeld et al., 2005).

Employment might exhibit control over offenders, as they might have more to lose by engaging in deviance (MacKenzie & De Li, 2002; Uggen et al., 2005). Offenders' involvement in employment may also be suggestive of a greater commitment to convention (Hirschi, 1969; Toby, 1957). Employment can also restrict opportunities for deviance and assist offenders in altering existing social networks (Uggen et al., 2005). Empirical findings from related studies suggest that offenders who are employed have lower odds of recidivism (DeJong, 1997; Gendreau et al., 1996; Griffin & Armstrong, 2003; MacKenzie & De Li, 2002; Uggen et al., 2005; Visher & Courtney, 2007).

Also important to consider are indicators of offenders' committing offense and prior criminal history (DeJong, 1997; Gendreau et al., 1996; MacKenzie et al., 1999; MacKenzie & De Li, 2002; Visher & Courtney, 2007). The salience of continuity in offending behavior is well documented (e.g., Laub & Sampson, 2003; Sampson & Laub, 1993), and so offenders who have lengthier criminal histories or more prior violations of release conditions should be more likely to recidivate. Researchers have revealed that offenders convicted of drug or property offenses (as opposed to other offenses) are more likely to recidivate (Langan & Levin, 2002; Rosenfeld et al., 2005; Solomon, Kachnowski, & Bhati, 2005).

Related to the potential importance of offenders' prior criminal history may be offenders' prior associates. Offenders who were previously associated with organized or territorial groups of other offenders (e.g., gangs) may have more difficulty altering their social networks. For example, Anderson (2001) documented the struggles that some offenders have when they return to communities and attempt to negotiate the line between the decent and the street life. For offenders who have ties to antisocial peer groups, the pull of those groups away from convention may make street life and consequently recidivism more likely. In support of these ideas, Huebner et al. (2007) found that offenders who were involved in a gang prior to their incarceration were more likely to recidivate after their release

Method

The data for this study were collected as a part of a larger project designed to evaluate the effects of a change to the Ohio Department of Rehabilitation and Correction (ODRC) parole-violation sanction policy [3] The target populations for the larger study included all offenders released on discretionary parole or PRC (mandatory parole) in Ohio during a 3-month period before (October-December, 2003) and after (August-October, 2005) the violation sanction policy was implemented statewide [4] The larger study revealed that the change to the sanctioning policy had no effect on various measures of offender recidivism (see Martin & Van Dine, 2008), and so the two samples were combined for the purposes of the current study

Data and Measures

The samples used for the larger study were selected using the same procedures Offenders were selected from a list of all the offenders released under postrelease supervision in Ohio for the first time in their current case during the periods mentioned above. All of the female offenders on the list were selected to ensure adequate representation Male offenders were selected randomly with the goal of 95% confidence intervals for parameter estimates. The male sample also included an oversample of 20% to account for unusable cases (e g , interstate compacts), cases with missing data, and so forth. These procedures resulted in 1,040 and 1,012 offenders for the two samples, respectively, and a combined sample of 2,052 offenders. Sample weights were derived to adjust for the oversampling of female offenders. These weights were normalized for the multivariate analyses.

Information regarding each offender was collected from a number of official sources (e.g., case files), which were cross-referenced against each other to increase the reliability of the data. The data regarding offenders' residential situations were particularly strong because of the nature of parole work (e.g , parole officers are required to track offenders' whereabouts in their field notes) and because officers were required to enter all address changes into a computer database as soon as they became aware of them Printed documentation of these address changes were commonly found in the offender files The data were collected by two researchers, and offenders were followed for a full year after their release or, if applicable, until the date they recidivated.

From the sample of 2,052 offenders, cases were removed if they were interstate compact cases (n = 27), were offenders released to detainers (n = 8), or had missing data on any of the variables of interest (n = 33) These procedures reduced the sample used here to 1,984 offenders released under supervision in

Table 1. Descriptive Statistics for Final Study Sample (Weighted) and the Ohio Release Population

	Study Sample		Ohio Release Population	
Measure	Proportion or *M*	*SD*	Proportion or *M*	*SD*
Age	34.72	(10 32)	34 01	(9 72)
Female	0 09		0 09	
Non-White	0 53		0.52	
Incarcerated for drug offense	0 15		0.14	
Incarcerated for property offense	0.22		0.22	
Discretionary parole	0 28		0 25	
n	1,984		19,757	

Note: All measures are dummy coded except age

the state of Ohio Table 1 contains descriptions of the weighted sample and the population of offenders released in Ohio during 2003 and 2005 based on measures that were available electronically Comparisons between the population parameters and sample statistics reported in Table 1 suggest that the sample was not significantly different from the populations on measures of age, race, gender, or committing offense type

Recently released offenders are a highly mobile group. Visher and Courtney (2007) found that more than 60% of their sample moved at least once during the year after they were released, and nearly a third of the offenders moved several times The data analyzed for this study revealed a similar level of mobility Regardless of the outcome examined, more than half of the offenders moved at least once and a substantial minority (≈27%) moved more than once ($M \approx 2\ 12$, $SD \approx 1\ 27$) The need to recognize multiple residential situations within the same offender and attribute the outcome variables to the correct situation required the creation of a longitudinal person–period data set Specifically, months were nested within offenders, permitting us to assess monthly changes in offenders' residential situations, mobility, and so forth.[5] This was particularly important for the examination of residential situations because it was not uncommon for offenders to live in a residential situation without incident for the majority of the study period but experience problems within a month or two after they had moved to a new situation Only months that the offenders were living in the community were included in the study[6]

All the measures included in the final models and the final Level 1 sample sizes are described in Table 2 Important to note is that the descriptions of the

Table 2. Sample Means and Standard Deviations (Unweighted).

Measures	Rearrested	Rearrested for Felony
Outcomes		
Rearrested hazard rate	0.05 (0.22)	—
Rearrested for felony hazard rate	—	0.02 (0.16)
Within-individual predictors		
Lived with spouse	0.05 (0.22)	0.05 (0.22)
Lived with boyfriend/girlfriend	0.08 (0.28)	0.09 (0.28)
Lived with parent	0.35 (0.48)	0.34 (0.47)
Lived with other relative	0.20 (0.40)	0.19 (0.40)
Lived in residential program	0.11 (0.31)	0.11 (0.32)
Homeless or at large	0.05 (0.21)	0.06 (0.23)
Number of prior residences	0.46 (0.80)	0.66 (1.04)
Prior violation	0.28 (0.45)	0.39 (0.49)
n_1	16,626	19,086
Between-individual predictors		
Age	34.83 (10.26)	
Female	0.19 (0.39)	
African American	0.51 (0.50)	
Employed	0.62 (0.48)	
Retired, disabled, or receiving SSI	0.09 (0.28)	
Incarcerated for drug offense	0.16 (0.36)	
Incarcerated for property offense	0.23 (0.42)	
High risk	0.16 (0.37)	
Low risk	0.43 (0.50)	
Gang member	0.14 (0.35)	
Discretionary parole	0.28 (0.45)	
n_2	1,984	

Note: SSI = supplemental security income. All measures are dummy coded except number of prior residences and age.

outcome measures and within-individual measures reported in Table 2 are summary statistics that are based on the number of offenders in the sample who were at risk for each month of the study, rather than simply the number of offenders. Recidivism was measured with two variables, including whether an offender was arrested for a new offense or a violation of their release conditions (*rearrested*) and whether an offender was arrested for a new felony offense (*rearrested for felony*). Both outcome measures were examined because some changes in offenders' residential situations could technically be considered violations of their release conditions and therefore may have been more likely to result in an arrest.

Rearrests were chosen over other measures (e.g., reincarceration) to avoid problems associated with measures that require further procession into the criminal justice system (see Maltz, 1984). Each of the measures of recidivism is technically an official measure and therefore may underestimate the offenders' actual offending behavior (see MacKenzie et al., 1999). Even though official measures of recidivism have been considered a valid indicator of offender behavior (e.g., Farrall, 2005), the limitations of the measures should be kept in mind when interpreting the findings.

In addition to the outcome variables, offenders' residential situations, residential mobility, and one of the control variables were measured within individuals to allow their effects to vary over time (monthly). We examined six different residential situations, including whether an offender *lived with spouse, lived with boyfriend/girlfriend, lived with parent, lived with other relative, lived in residential program*, or was *homeless or at large*.[7] All of the other possible residential situations (e.g., living with a roommate) were pooled and designated as the reference category. Living with a parent was distinguished from living with other relatives because the strength of the attachment between individuals and their parents or spouse is often greater than their attachment to siblings or other relatives (Sampson & Laub, 1993). Thus, the degree of control over offenders who lived in those types of situations was expected to be greater. In addition, and in contrast to other relatives, parole authorities rarely restricted offenders from living with significant others or parents.[8]

Other within-individual measures included *number of prior residences* and *prior violation*. Number of prior residences measures the total number of residential moves an offender accrued prior to the beginning of each month. Prior violation reflects whether an offender had committed a technical violation prior to the beginning of each month.

We also included between-individual predictors measuring each offenders' *age* at the start of supervision, whether they were *female*, *African American*, *employed*, or *retired, disabled, or receiving supplemental security income* (SSI). Employed indicates whether an offender had a period of steady employment during the follow-up period. Although other researchers have measured employment within individuals (e.g., Horney et al., 1995; MacKenzie & De Li, 2002), we were unable to do so here. We observed too much between-officer variability in the quality of their field notes with regard to dates of employment to ascertain whether or when offenders changed or lost their jobs. For example, it was often the case that officers would record that an offender had obtained employment but several months later note that the offender was still searching for work (indicating they had lost their previous job). As such, we chose to error on the side of caution and measure employment between individuals.

Several variables tapping offenders' prior criminal behavior were also included. Specifically, we included whether an offender was *incarcerated for a drug offense* or a *property offense*, classified *high* or *low risk*, as well as whether they were designated a *gang member*. The measures of high and low risk were taken from the ODRC's additive static risk assessment that primarily comprised of indicators of an offenders' prior criminal history and ranks individuals as either high, medium, or low risk. The measure of gang membership was retrieved from ODRC prison records and indicates participation in a security threat group. Similar to Huebner et al.'s (2007) measure of gang membership, the measure used in this study does not indicate whether offenders continued their gang involvement after their release from prison. Finally, we examined whether offenders were released on *discretionary parole* as opposed to mandatory parole (in Ohio, PRC).

Statistical Analysis

As discussed above, the focus on time-varying and time-invariant predictors of recidivism required the creation of a person–period data set, with repeated monthly observations nested within each of the offenders. The dichotomous indicators of recidivism during the monthly observations were examined with discrete time-hazard models. However, the focus on within-individual change raised concerns about the applicability of the traditional discrete time-hazard model (e.g., within-individual changes in offenders' behavior may not be independent of offenders' stable characteristics). These potential problems for the traditional discrete time-hazard model was overcome by incorporating the model within a multilevel estimation method (see Hedeker & Mermelstein, 2011; Osgood, 2010; Raudenbush & Bryk, 2002). The multilevel discrete time-hazard modeling technique (a) facilitated the examination of changes in residential situations and residential mobility for each offender that were observed during the time frame of the study, (b) adjusted for the dependence among multiple observations within the same offender, (c) permitted the hypothesis tests to be based on the appropriate sample sizes (months vs. offenders), and (d) removed (through group-mean centering) between-offender variation from the within-offender observations that might have corresponded with differences in recidivism rates across offenders.[9] Group-mean centering also restricted the Level 1 analyses to within-individual variation, permitting the examination of the effects of within-individual changes on recidivism.[10]

The analysis proceeded in several stages. First, an unconditional model revealed significant variance ($p \leq .05$) in each outcome at Level 1 (within offenders) and Level 2 (between offenders). Next, various specifications of the baseline hazard functions were examined to determine the appropriate

representation for the main effect of time. The Level 1 predictors were then added to the models. Each of these predictors was fixed across all supervision units; however, the Level 1 model intercepts were allowed to vary across supervision units. Consistent with objective (d) from above, the measures of offenders' residential situations were centered on their means for each offender. Finally, the Level 2 predictors were entered, allowing for examination of the main effects of the Level 2 predictors on the Level 1 intercepts.

A potential concern with using bi-level estimation methods with these data involved the limited number of months within some of the offenders (e.g., some offenders were rearrested soon after release). This situation raised concerns about the reliability of the Level 1 intercepts, and so the Empirical Bayes (EB) estimates of Level 1 intercepts were modeled at Level 2 (Raudenbush & Bryk, 2002). As the Level 1 predictors were group-mean centered, these models also included control variables representing the Level 2 means of the Level 1 explanatory variables (e.g., proportion of months living with spouse; Osgood, 2010; Raudenbush & Bryk, 2002).[11]

Findings

Table 2 reveals that the average hazard rates for the two outcomes were .05 (rearrested) and .02 (rearrested for felony), respectively. In other words, offenders typically had a conditional probability of .05 that they were rearrested and a conditional probability of .02 that they were rearrested for a new felony offense during each month of the study period. During the entire year after their release from prison, 44% of these offenders were rearrested, whereas 24% of the offenders were rearrested for a new felony. Examination of the monthly conditional probabilities of the two measures of recidivism (not shown) revealed minimal variability across the 12 months examined here.[12] Examination of preliminary models with a general specification for the time predictors resulted in time coefficients that were nearly identical, suggesting that there was no discernable relationship between time and the odds of recidivism. For these reasons, we constrained the effect of time on recidivism (hazard) to be constant across all the time periods examined in this study. Treating the effect of time as constant across the time periods contributed to a more parsimonious model and generated more stable coefficient estimates of the effects of the predictor variables (Singer & Willett, 2003).

Table 3 contains the bivariate relationships between offenders' residential situations and both measures of recidivism. These analyses are presented in addition to the multivariate analyses because the bivariate relationships permit comparisons between the effects of each residential situation relative to all the

Table 3. Bivariate Relationships Between Offenders' Residential Situations and Recidivism.

	Rearrested	Rearrested for Felony
	β	β
Lived with spouse	−1.00**	−0.48**
	(.17)	(.13)
Lived with boyfriend/girlfriend	0.77**	0.77**
	(.09)	(.07)
Lived with parent	−1.12**	−1.26**
	(.07)	(.06)
Lived with other relative	−0.78**	−0 44**
	(.09)	(.07)
Lived in residential program	−1.35**	−0.98**
	(.08)	(.06)
Homeless or at large	3.28**	1.69**
	(.12)	(.07)

Note: Maximum likelihood coefficients (with standard errors) generated from discrete time-hazard models reported.
**$p \leq .01$

other situations, as opposed to comparisons between the residential situations and the reference category. Regarding the multivariate analyses, the results from the Level 1 (within individual) models are contained in Table 4, and Table 5 displays the Level 2 (between individual) effects.[13]

Rearrest

The bivariate analyses (Table 3) revealed that offenders who lived with their spouse, a parent, other relative, or in a residential program were at lower risk to be rearrested. Offenders who lived with their boyfriend/girlfriend or were homeless or at large had higher odds of being rearrested.

Turning to the multivariate analysis, the results from the within-individual model (Table 4) revealed that offenders who lived with their spouse, parent, other relative, or in a residential program were less likely to be rearrested. Offenders who lived with their boyfriend/girlfriend or were homeless or at large had a higher likelihood of being rearrested. Offenders who moved more frequently or had a prior violation were also more likely to be arrested. Based on the odds ratios reported in Table 4, compared with the reference category, offenders who lived with their spouse had 43% lower odds of being rearrested. In contrast, in

Table 4. Level 1 Discrete Time-Hazard Models Predicting Recidivism

	Rearrested		Rearrested for Felony	
	β	e^{β}	β	e^{β}
Constant	−2.04		−2.81	
Lived with spouse	−0.55**	0.57	−0.62**	0.54
	(.17)		(.11)	
Lived with boyfriend/girlfriend	0.60**	1.82	0.27**	1.31
	(.10)		(.06)	
Lived with parent	−0.18*	0.83	−0.85**	0 43
	(.09)		(.06)	
Lived with other relative	−0.33**	0.72	−0.47**	0.62
	(.08)		(.06)	
Lived in residential program	−0.23**	0.79	−0.43**	0.65
	(.09)		(.05)	
Homeless or at large	1.50**	4.48	0.04	1.04
	(.12)		(.06)	
Number of prior residences	1.19**	3.28	1.08**	2.96
	(.03)		(.02)	
Prior violation	0.81**	2.25	0.92**	2.52
	(.05)		(.04)	
n_1	16,626		19,086	
Proportion within-individual variation explained	0.40		0.51	

Note: Maximum likelihood coefficients (with standard errors) and odds ratios reported.
*$p \leq .05$ **$p \leq .01$

the months offenders lived with their boyfriend or girlfriend, their odds of being rearrested was 82% higher. Compared with the reference category, offenders who lived with a parent had a 17% lower risk of being rearrested, whereas offenders who lived with a relative had 28% lower odds of being rearrested. During the months offenders lived in a residential program, they had a 20% lower risk of being rearrested. Finally, each time an offender moved was associated with a 125% increase in the risk, they were rearrested. The significant predictors in the model accounted for 40% of the within-individual variation in this outcome.

The results of the between-offender model are presented in Table 5. Younger offenders and male offenders were both more likely to be rearrested. Offenders who were employed, retired, disabled, receiving SSI, classified low risk, or released on discretionary parole had a lower rate of rearrest. By contrast,

Table 5. Level 2 Main Effects on Recidivism (Level 1 eb Intercepts as Outcomes).

	Rearrested		Rearrested for Felony	
	γ	*b*	γ	*b*
Intercept	−1.98		−4.15	
Age	−0.03**	−.10	−0.05**	−.11
	(.01)		(.01)	
Female	−0.70**	−.09	−0.91**	−.06
	(.15)		(.30)	
African American	−0.16	−.03	0.05	−.01
	(.12)		(.18)	
Employed	−0.87**	−.14	−1.67**	−.18
	(.13)		(.20)	
Retired, disabled, or receiving SSI	−0.71**	−.07	−1.75**	−.11
	(.23)		(.36)	
Incarcerated for property offense	0.47**	.07	0.58**	06
	(.14)		(.21)	
Incarcerated for drug offense	0.10	.01	0.15	.01
	(.16)		(.25)	
High risk	0.57**	.07	0.65**	.06
	(.17)		(.25)	
Low risk	−0.89**	−.15	−0.86**	−.10
	(.13)		(.19)	
Gang member	0.57**	.07	0.59*	.05
	(.17)		(.24)	
Discretionary parole	−0.49**	−.07	−0.67**	−.07
	(.14)		(.20)	
n_2	1,984			
Proportion between individual variation explained	0.32		0.29	

Note: SSI = supplemental security income. Unstandardized coefficients (with standard errors) and standardized coefficients reported. Models include controls for mean levels of all the Level 1 predictors.
*$p \leq .05$ **$p \leq .01$.

offenders who were incarcerated for property offenses, classified high risk, or designated a gang member were more likely to be rearrested. Whether offenders were African American or incarcerated for a drug offense had no effect on their rate of rearrest. The significant predictors explained 32% of the between-individual variation in the rate of rearrest.

Rearrest for Felony

The findings from the bivariate analyses (Table 3) were consistent with those from the analyses of rearrest. Offenders who lived with their spouse, a parent, other relative, or in a residential program had lower odds of rearrest for a new felony. Offenders who lived with their boyfriend/girlfriend or were homeless or at large had higher odds of rearrest for a new felony.

The analysis of within-individual effects on rearrest for a new felony (Table 4) revealed that offenders who lived with a spouse, parent, other relative, or in a residential program had a lower probability of rearrest for a new felony. By contrast, offenders who lived with their boyfriend/girlfriend had a higher likelihood of rearrest for a new felony. These results were all consistent with the analysis of rearrest. Unique to this outcome, however, having been homeless or at large had no effect on offenders' likelihood of rearrest for a felony. Consistent with the models of rearrest, offenders who moved more frequently or had a prior violation of their release conditions had higher odds of being rearrested for a new felony. The odds ratios reported in Table 4 suggest that, compared with the reference group, offenders who lived with their spouse had 46% lower odds of being rearrested for a new felony. However, during the months offenders lived with their boyfriend/girlfriend, they had a 31% higher risk of being rearrested for a new felony. Offenders who lived with a parent or lived with a relative had 57% and 38% lower odds of recidivism, respectively. During the months offenders were living in a residential program, their odds of being rearrested for a new felony were 35% lower. Each time an offender moved was associated with a 196% increase in the odds of recidivism. The model explained 51% of the within-individual variation in rearrest for a new felony.

The offender-level analysis of the rate of rearrest for a new felony (Table 4) revealed findings that were completely consistent with those derived from the model of the rate of rearrest. Younger offenders and male offenders were both more likely to be rearrested for a new felony. Offenders who were employed, retired, disabled, receiving SSI, classified low risk, or released on discretionary parole had a lower probability of being rearrested for a new felony. Offenders incarcerated for property offenses, classified as high risk, or designated gang members had higher rates of rearrest for a new felony. Neither race (African American) nor incarcerated for a drug offense had any effect on the rearrest rate for a new felony. Taken together, the relevant predictors explained 29% of the between-individual variation in the rate of rearrest for a new felony.

Discussion and Conclusions

The findings from this study underscore the importance of offenders' residential situations and residential mobility on their likelihood of recidivism. Each of the residential situations that we examined here was related to at least one of the two measures of recidivism. Consistent with our predictions, during the months offenders lived with their spouse, parent, other relative, or in a residential program, they were less likely to recidivate. During the months that offenders lived with a boyfriend/girlfriend or were homeless or at large, they typically had higher odds of recidivism. Offenders who moved more frequently were also more likely to recidivate. These findings are consistent with those derived from other studies that suggest that the situational context or local life circumstances of offenders can affect their likelihood of offending (e.g., Horney et al., 1995; Griffin & Armstrong, 2003).

Taken together, the results from this study are also favorable to a social control perspective and suggest that future studies should examine more direct measures of the concepts that were examined here. For example, we uncovered differences between the effects of living with a spouse versus living with a boyfriend/girlfriend. These findings are consistent with Horney et al.'s (1995) and underscore Sampson and Laub's (1993) discussion regarding the importance of involvement in quality relationships. Specifically, they argued that it is the strength of the attachment to the relationship that affects offenders' likelihood of reoffending (see, for example, Laub et al., 1998; Laub & Sampson, 2003). It may be worthwhile to go beyond comparisons between measures of married and cohabitating versus other cohabitating relationships, and examine more directly the strength of offenders' attachment to their relationship with significant others.

We also observed that offenders who live with a parent or other relative were less likely to recidivate. The effects of parents or other family members on individuals' likelihood of deviance have received considerable attention within the context of juvenile delinquency (see, for example, Sampson & Laub, 1993, for a review of this literature), but the potential effect of parents or other relatives on adult offending has rarely been examined. The dearth of attention to potential parental or other familial effects is probably attributable to the assumption that most individuals leave their parents' home after reaching adulthood. Contact with other relatives may also be less frequent in adulthood, weakening the ties between individuals and these other family members. Within the context of prisoner reentry, however, parents and other relatives are often one of the few resources for released offenders to draw from (Visher & Courtney, 2007). Future studies may want to examine the content and quality

of parental or other familial relationships, to shed light on whether the effect of parents or other relatives on offenders' likelihood of recidivism results from the direct supervision these individuals provide, or whether the attachment between parent or other relatives and offenders becomes stronger when offenders return home to their parents' or other family members' residence.

Future studies may also want to examine more directly the countering influence of supervising officials on offender's self-selection into high-risk residential situations. We speculated that parole officials may restrict offenders from living with individuals, including family members (aside from parents or spouses), who were under supervision or had criminal histories. Our speculations were based on (a) nonsystematic observations made during the collection of the data for this study and (b) department policy that required the release authorities in Ohio to investigate all potential residential situations where offenders may reside on their release. Factors that were considered relevant for restricting offenders from living in a residence include the availability of firearms, criminal records of individuals living in the residence, familial relationships, family members attitudes, and so forth. Pursuant to conditions of release, related factors could be used by Ohio parole officers to deny changes of residence if offenders request to change their residence. Nonsystematic observations made during the collection of the data used for this study suggested that denial of initial placements was quite common. Residence changes were also denied, although to a lesser extent. It is worth mentioning, however, that offenders' self-selection into high-risk residential situations was not always countered by formal control. This seemed especially true in the case of significant others, who in some cases may not have provided the supportive environment that offenders returning to communities often require An important, and policy relevant, question may be whether or when parole officials should restrict offenders from cohabitating with certain individuals (e.g., family members).

The effects of formal controls on this population were also persistent. During the months that offenders lived in a residential program, they were less likely to recidivate, perhaps because of the formal control the program provided over their behavior. By contrast, individuals who lived in situations devoid of control such as being homeless or at large were more likely to recidivate. Taken together, these findings are consistent with other studies of the effects of formal controls (e.g., Committee on Community Supervision and Desistance From Crime, 2008; MacKenzie & De Li, 2002) and from a more practical perspective, support the use of residential programming for encouraging prosocial behavior among this population.

Aside from the substantive findings concerning offenders' residential situations, we also observed other results that were consistent with much of the prior research on offender recidivism. In support of findings regarding continuity of

offending behavior (see, for example, Laub & Sampson, 2003), we found relatively consistent relationships between our measures of recidivism and offenders' risk level, committing offense type (property), and their prior violation history. We also observed that female offenders, older offenders, and those offenders who were employed during supervision were less likely to recidivate, whereas gang members were more likely to recidivate. These findings reinforce related findings from other recent studies of offender recidivism (see, for example, DeJong, 1997; Gendreau et al., 1996; Griffin & Armstrong, 2003; Huebner et al., 2007; MacKenzie & De Li, 2002; Uggen et al., 2005; Visher & Courtney, 2007).

Interestingly, we did not observe effects for offenders' race. These findings contrast those derived from other studies (e.g., DeJong, 1997; Gendreau et al., 1996; Griffin & Armstrong, 2003; Rosenfeld et al., 2005). The differences in the findings between studies could be due to model specification, as we were able to include a number of predictors that, due to data restrictions, could not be included in some prior studies. Our findings could also be the result of the examination of a statewide sample. Many of the existing studies have examined more restricted samples such as offenders released in a city or county. Recall that we argued that the effects of offenders' race may be linked to the neighborhood in which the offenders are released (see also Rose & Clear, 1998). Although we could not examine this idea directly here, it may very well be that the relationship that has been observed in other studies was attenuated here by the inclusion of offenders who shared similar characteristics but were released in nonurban areas.

From a more practical perspective, our findings reinforce observations regarding the influence of both static and dynamic factors on offenders' likelihood of recidivism (see, for example, Gendreau et al., 1996). Although we discussed these processes within the context of continuity and change, the findings derived from this study can just as easily be interpreted in a more applied context. To be sure, studies that examine the influences of offender recidivism in the short term may be of particular importance to correctional administrators because they often work with offenders for only short intervals of time. Recall that the typical period of supervision in Ohio is less than a year and a half. Findings from studies that examine both time-invariant (static) and time-variant (dynamic) predictors of recidivism can be useful not only for guiding the development of offender assessment tools but also for informing correctional administrators about the factors that are associated with changes in offenders' odds of reoffending during the course of the supervision period. This information could, in turn, be used to inform treatment and supervision strategies designed to reduce recidivism.

Finally, it is worth mentioning some important limitations to this study that should be kept in mind when considering the findings. First, many of the measures included here only proxy some of the concepts that we discussed such as

offenders' attachment to their spouse Additional studies that include more direct measures of some of these concepts are needed to determine the relevance of the ideas supported in part by these analyses Future studies may also seek to examine whether residential situations or residential mobility are only proxies for some other factors that affect offenders' odds of recidivism For instance, it might be important to examine not only the effects of whether offenders live in certain situations or are more mobile but also *why* they choose certain situations or decide to move from one situation to the next. Second, the decision to only follow offenders for 1 year following their release may limit the generalizability of the findings Although the majority of offenders released in Ohio are only under supervisions for a period of time less than a year and a half, this may not be the case in other jurisdictions, in particular, states with indeterminate sentencing schemes However, in their national-level study, Langan and Levin (2002) observed that more than 65% of all offenders who were rearrested within a 3-year period were arrested in the 1st year of their release, and so the problem may be less of a concern. Third, the examination of dichotomous indicators of recidivism created a potential problem for the offender-level estimates Specifically, the estimates derived from the offender-level analyses were potentially influenced by the relative stability of the individual offenders' rates of recidivism Even though additional analyses indicated that our results were valid, the problem could not be completely overcome The problem could also be more severe in other data sets with similar structures Researchers seeking to examine within-individual change in the future may want to proceed with caution when examining outcomes similar to ours Relatedly, future researchers may want to collect repeated measures of dichotomous indicators of recidivism, so as to permit the estimation of more stable recidivism rates Finally, it is worth reiterating that the outcome measures and a number of the predictor variables (including offenders' residential situations) were created from information retrieved from official sources Even though attempts were made to increase the reliability of the measures by cross-referencing the information across multiple sources, the information and timing of information was still potentially subject to some discretionary recording by parole officers All causal inferences drawn from this study were, in part, dependent on the accuracy of the dates contained within parole officials' records

The limitations of the study aside, the findings derived from this sample of offenders released under supervision in Ohio offer some important insights regarding offender behavior in the short term, but additional research on this rapidly growing, high-risk population is sorely needed Only after a number of studies uncover consistent effects on offender recidivism, both in the short- and long term, can parole administrators use this information to derive more

sensible methods for addressing the problem. The relevance of returning offender populations for public safety underscores the importance of examining the influences on offender recidivism for improving supervision strategies classification instruments, and developing of community treatment, not to mention informing our understanding of offender behavior.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interests with respect to the authorship and/or publication of this article.

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Notes

1. According to Ohio Revised Code (5120:1-1-41), the parole board must order a period of postrelease control (PRC) of 5 years for offenders sentenced for sexual offenses or felony one offenses and 3 years for offenders sentenced for felony two offenses and felony three offenses where the offender caused or threatened to cause physical harm to a person. The parole board may order a period of PRC of up to 3 years for all nonviolent felony three offenses, felony four offenses, and felony five offenses. (In practice, a 1-year period of PRC is typically imposed.) The parole board may also terminate or modify the period of PRC before the supervision period is concluded. For example, during the years 2004 to 2008, the average length of PRC served by offenders in Ohio was about 1.4 years.
2. The model described here does not permit an empirical test of control theory per se because more direct measures of relevant concepts are needed. We chose control theory because it provides a unified framework for studying many of the within- and between-individual predictors found to be relevant in related research (see, for example, Laub & Sampson, 2003) It is worth noting, however, that other theories could be applied because the measures examined here can only proxy informal social controls. For instance, some of our measures could be construed as proxies for various aspects of strain theory (Agnew, 1999, 2001) As an example, offenders who were unemployed could have felt greater strain because they were not earning a legitimate income, possibly increasing their odds of recidivism.
3 The violation sanction policy was designed to structure officers' responses to offenders' violations of the conditions of their release. The primary intent of the policy was to promote consistency in offender treatment and reduce officers' reliance on violation hearings. A more detailed description of the policy can be found in Martin and Van Dine (2008)

4 The state of Ohio has been a determinate-sentencing state since 1996. Although the implementation of sentencing guidelines abolished discretionary parole release, the guidelines still provided for PRC supervision for those offenders who would have previously received parole and discretionary PRC placement for nonviolent offenders. Offenders sentenced before the implementation of the sentencing guidelines, but released during the period of the study, were still released under discretionary parole supervision.

5 In cases where an offender moved during the month, the residential situation where they lived for the majority of the month was used.

6. The number of months at risk differed across offenders because some offenders recidivated (as defined for this study) before the study-end date and also because some offenders were incarcerated for portions of the study period for reasons other than those resulting in their recidivism (as measured for this study). Thus, the number of months modeled at Level 1 reflects the number of "street" months for each offender.

7 This decision to combine all other relatives into the same category was based on (a) the discussion of parole officials restricting offenders from residing with family members (other than parents and spouses) who had a criminal record or were also on supervision and (b) the similarity of bivariate relationships between different measures of familial relationships (e.g., sibling vs. other relative) and the outcomes examined in this study. Although it is often the case that offenders are in violation of their release conditions when they do not maintain a stable residence, a measure reflecting whether an offender was homeless or at large was included in the models as a statistical control, but also for theoretical reasons. The logic behind this decision may be questioned, but violations of release conditions do not always result in formal action (see, for example, McCleary, 1978) and those that do are sometimes handled in the community without an arrest. Even though the majority of offenders who were homeless or at large for extended periods of time were rearrested, we were also interested in the effects of being homeless or at large on other measures of recidivism that were not linked to the behavior of parole officials (e.g., rearrested for a felony). For these reasons, along with the need to control the effect of being homeless or at large on recidivism, we included the measure in all of the models.

8 Ohio Adult Parole Authority policy requires release authorities to investigate all potential residential situations where offenders may reside on their release. Factors that are considered relevant for restricting offenders from living in a residence include the availability of firearms, criminal records of individuals living in the residence, familial relationships, family members attitudes, and so forth. Pursuant to conditions of release, related factors could be used by Ohio parole officers to deny changes of residence if offenders request to change their residence. Information on parole officials' decisions to restrict offenders from living in certain

residential situations was not collected. During the collection of the data for this study, however, we did observe that residency restrictions were a relatively frequent occurrence.

9 It is not uncommon for some types of offenders to self-select into certain residential situations (e.g., younger offenders may have been more likely to live with a parent); however, by group-mean centering the time-varying predictors, any between-offender variation that may have influenced the within-offender effects was removed, permitting estimation of within-offender effects that were independent of between-offender differences (Osgood, 2010; Raudenbush & Bryk, 2002)

10. Estimation of a multilevel discrete time-hazard model also adjusts for problems (e.g., biased standard errors) associated with data that are unbalanced (Hedeker & Mermelstein, 2011, Raudenbush & Bryk, 2002). The data examined in this study were unbalanced for two reasons: (a) offenders who recidivated were censored and (b) the months offenders spent in jail for issues other than those that would constitute the relevant measure of recidivism were not included in the analyses (e.g., detained for an outstanding warrant).

11 Prior studies of within-individual change have examined the number of self-reported behaviors per month (e.g., Horney et al., 1995; Griffin & Armstrong, 2003; MacKenzie & De Li, 2002). The outcomes examined here were dichotomous measures of recidivism, only measured once during the 1-year follow-up period. Although this was not a problem for estimating the time-varying effects (Level 1), this situation did create a potential problem for the offender-level (Level 2) estimates. Specifically, the Level 2 outcome (the recidivism rate) was necessarily influenced by the differences in the number of months offenders were at risk. In hierarchical analyses of dichotomous outcomes, the Level 2 outcome becomes an adjusted rate of the Level 1 outcome. (Technically, the Level 2 intercepts that were generated from these models were not adjusted for the Level 1 effects because the Level 1 predictors were group-mean centered.) For the analyses performed for this study, the numerator of the Level 2 outcome (recidivated, 0 = *no*, 1 = *yes*) was standardized by the number of Level 1 units (months an offender was at risk, 1 to 12). Thus, an offender who was rearrested in the 2nd month after his or her release would have a substantially different value than an offender who was rearrested in the 8th month after his or her release. Although we could not eliminate this problem, we did estimate the models (with the same predictors included) predicting a dichotomous indicator of each outcome. Comparisons across the two analyses revealed no substantive differences in the offender-level effects.

12. For both outcomes, the range of the monthly conditional probabilities of recidivism was less than .02, and most of the monthly conditional probabilities of recidivism fell within 01 of the average conditional probability for the respective measure of recidivism. The only exception was the conditional probability an offender was

rearrested during Month 12 (the study-end date), which was heavily influenced by the density of nonrecidivists. Still, the difference between the highest conditional probability of rearrest and the conditional probability of rearrest for Month 12 was .026, and the difference between the average conditional probability of rearrest and the conditional probability of rearrest during Month 12 was .014.

13 The coefficient estimates contained in Tables 3 and 4 can be interpreted similar to logistic regression coefficients To facilitate the interpretation of the magnitude of the Level 1 effects, odds ratios are also reported. The Level 2 (offender level) estimates contained in Table 5 can be interpreted in the same way as ordinary least squares estimates. Recall that in multilevel analyses of dichotomous outcomes, the outcome becomes [the] adjusted (to the) rate of the Level 1 outcome (recidivism) at Level 2 (Raudenbush & Bryk, 2002). To gauge the magnitudes of effects, standardized coefficients (β weights) are also reported.

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Examining sexual offences through a sociological lens: A socio-cultural exploration of causal and desistance theories

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Abstract

This article considers often contrasting theoretical approaches to sexual and non-sexual offending by comparing some influential accounts of the causes of sexual offending and examining the role of socio-cultural factors in the offending process. It also examines how desistance theories may be applied to this complex interaction between psychological factors and socio-cultural ones. The article concludes that there is a strong theoretical argument for substantial socio-cultural elements of sexual offending. It also argues that desistance theories may be applied for the same reason, but also because the causal and desistance process may be thought of as two separate processes. Moreover, and related to the second point, many criminological theories position offending behaviour not in the action that is considered a crime, but the fact that this action is a crime, meaning that both resistance to and desistance from sexual offending can be viewed in the context of general criminological theories.

Keywords

Criminological theory, desistance, offending, sexual offences, offending

Introduction

Sexual crimes have tended to be neglected in major work regarding criminological and desistance theories until relatively recently, and similarly desistance theories have traditionally been omitted from psychological literature regarding sexual offending, despite empirical evidence that people do desist from sexual offending (Laws and Ward, 2011). It is often hard to reconcile what initially appears to be a fundamentally different causal

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process of sexual offending with causal factors and processes of desistance from general offending. Furthermore, whether sexual offending is explained and interpreted from a psychological or socio-cultural perspective is important. For example, how might a psychological focus on the causes of sexual offending relate to a sociological perspective on desistance? On the other hand, how does one move on from offending behaviour if such behaviour is to some extent entrenched in the values of a patriarchal society?

From a rehabilitation perspective, sexual offending is often perceived very differently to non-sexual offending, and this positions the sexual offender as the 'other'. As Ward (2014: 131) stated, 'While there may not be a gene(s) for rape or child sexual offending, there is a growing conviction that the cognitive neurological systems of sex offenders may be functionally abnormal in some way'. This is in contrast to predominant (but not all) views of non-sexual offending, which is that offending behaviour is heavily influenced by environment and social structure. This article considers often contrasting theoretical approaches to sexual and non-sexual offending by comparing some influential accounts of the causes of sexual offending and examining the role of socio-cultural factors in the offending process.

Sociological approaches to 'general' offending

In criminology, the debate over whether the main influences on criminal behaviour are individual or socio-structural has broadly tended to favour the sociological perspective (Laub and Sampson, 1991), although views on this differ. To give just one example, principles of differential association suggest that interaction with others, directly or indirectly, results in courses of behaviour consistent with the social group's actions or norms/values (Akers and Jensen, 2006), and these can include friends/family or wider influences such as the media. These associations can encourage or discourage criminal behaviour, resulting in risk or protective situations. These risk or protective factors may occur at different times in life and this may affect when a person commits crime. For instance, a protective factor when young may be a supportive family, whilst a risk factor may be residing in a disadvantaged neighbourhood (Losel and Farrington, 2012; Stouthamer-Loeber et al., 2002). If either of these situations are reversed (for instance when a person leaves home or if relationships change), then the propensity to offend may also change. In adulthood, a move towards having one's own family may be a protective factor; however, a breakdown of this family may be a risk factor.

Smallbone et al. (2008) argued that cultural norms influence attitudes and actions according to the 'proximal-distal' continuum'; that networks closest to us such as friends and family will have a stronger influence than wider society. Similarly, Wikstrom's (2010) situational action theory stated that 'humans are rule-guided actors' (p. 217), and that the decision of whether or not to commit a crime depends on a person's internal system of rules, along with those of the situation. Hence, different situations result in different moral rules, and these may change at different points in life. Akers (1990: 164) argued that association with 'norm-violating peers' is one of the best predictors of general recidivism. Theoretically, it is not hard to imagine that this may be the case, since direct association with others who normalise such activity may have a counter effect to the moral rule of society in general. Farrington (1992) also suggested that peer attachment can explain the

general life course trajectory, with criminal behaviour beginning in adolescence when offenders have a stronger relationship with their peers instead of their parents, and declining when the main influence is the spouse. There are many other theories of why people commit crime, however many of them share the view that the behaviour is heavily influenced by a person's position in society. It is interesting to consider this position in the case of those who have committed sexual offences, and surprisingly, there has been little empirical research into this.

Causal theories of sexual offending

Theories of sexual offending have taken a somewhat different route, often being studied from a psychological perspective, and offenders treated in a clinical setting (e.g. Hanson and Yates, 2013; Hanson et al., 2002). However, the literature now recognises the highly complex nature of sexual offending and presents integrated cross-disciplinary approaches that encompass psychological factors and processes as well as how these are affected by other factors such as environment.

Ward et al. (2006) described different levels of theories. Level 1 theories are multifactorial and seek to explain how many complex factors combine to get a person to a point where they offend sexually. This takes place in the context of the heterogeneous nature of sexual offending, and the fact that actually different types of offence are likely to have different causes (Ward, 2014). These level 1 theories include Marshall and Barbaree's (2006) Integrated Theory, and Ward and Siegert's (2006) Pathways Model. Level 2 theories are single factor theories and describe one element of the multifactorial theories, generally psychological or socio-cultural factors such as intimacy deficits or feminist perspectives. Level 3 theories are descriptive models that describe the offending process.

In this section, I will consider what three significant causal theories (attachment theory, feminist theory and cognitive distortions) say about sexual offending. Whilst not intended to fully encompass integrated or etiological theories (the theories outlined would be considered level 2 theories), they have been chosen since they represent influences on sexual offending that are generally not considered widely when discussing non-sexual offending. The most obvious difference between the two approaches is the focus on socio-structural influences on non-sexual offending, and in particular whether sexual offending may be amenable to change according to different environments in a similar manner to non-sexual offending. Hence, this will be discussed for each of the three causal factors.

Attachment theory

Attachment theory is well established within the neurobiological field (Kraemer, 1992) and is one of the theories most often linked to analysis of the causes of sexual offending (e.g. Bowlby, 1969; Smallbone and Dadds, 2000; Ward et al., 1996). Attachment theory describes how the infant mimics behavioural and emotional characteristics from its primary caregiver, generally the mother. This is particular to social primates and is not learned behaviour, but rather a type of imprinting. Depending on how this attachment forms, the infant sometimes has a higher risk of some form of social dysfunction.

Sometimes this manifests in intimacy deficits that results in a person committing a sexual offence in order to meet these needs. Many authors have developed models of different attachment styles (e.g. Ainsworth and Wittig, 1969), and Ward et al. (1995) devised arguably one of the most comprehensive models of attachment styles in relation to those who have committed sexual offences. They argued that the type of attachment will influence the characteristics of the offender, and hence their victim type and offence type. These are briefly defined as the following:

- In the *anxious/ambivalent* attachment style, the individual has a negative view of themselves but a positive view of others, which leads them to seek approval from others. They will desire intimacy but fear relationships. If this type of attachment style manifests as a sexual offence, they will seek someone whom they can control and who 'looks up' to them. Hence, the victim of this offender type will often be a child who is known to the offender, and offending will require minimal use of coercion or force. They are likely to groom and attempt to form a relationship with their victim.
- In the first type of *avoidant* attachment style, the individual has a negative view of themselves and also a negative view of others, seeing them as untrustworthy. They may seek a sexual relationship but avoid intimacy, and lack the social skills to form a healthy adult romantic relationship even if they desire one. This will result in the person seeking impersonal sexual contact, and some will resort to coercion if necessary. Their victims may be adults or children, and they are less concerned with a specific gender.
- In the second type of *avoidant* attachment style, the individual has a positive view of themselves and a negative view of others, blaming others for any problems in their lives. They are hostile and do not desire close relationships. This type of offender is the most aggressive and will use force against adults and children. The use of force is a way of expressing aggression and not simply instrumental to committing the act.

These theories are attractive as they attempt to explain the complexities of different types of sexual offences that other theories cannot, and there are few types of sexual crime that would not fall under at least one of those categories. It may initially appear that such attachments must be fixed for life without treatment, however there is some evidence that attachment styles can change according to socio-structural elements: 'changes in caregiver environments and stressful life events (severe illness, parental illness, divorce) have been shown to alter attachment patterns from infancy, through childhood and adolescence, to adulthood' (McKillop et al., 2012: 593). For example, Smallbone (2006) argued that being a caregiver can bring about a sexual offence since the offender confuses adult and parental attachment and seeks sexual intimacy with the child. This suggests that a person, rather than not having the opportunity, did not have the propensity to offend until becoming a caregiver. Different attachment styles may also result in different quality of relationships, where for instance the anxious/ambivalent individual may appear to have a good intimate relationship, however they may maintain an emotional distance within this relationship (Marshall, 2010). This further

complicates the situation: the mere fact of being in an adult relationship or a peer group is not necessarily indicative of secure adult attachment. Hence, attachment theories do to some extent support the possibility that experiencing different environments may actually alter the propensity to offend.

Feminist theory

Gendered theories of sexual crime consider how the position of females in society may sanction their sexual abuse. Feminist theory broadly states that a patriarchal society 'create[s] and maintain[s] male control over females' (Waldby et al., 1989: 97), and that sexual abuse is one of many ways used to dominate and suppress women in a world where women take second place to men and are merely 'object[s] for male manipulation' (Waldby et al., 1989: 98). The feminist interpretation of child abuse (of both genders) also relates to this system of power and domination of children. This is all caught up in the socio-structural lack of power that these subordinated groups experience, and is analogous to the power exerted over other groups such as race and class.

As such, an offender's motivation to offend is heavily influenced by the culture around them, which continually reinforces these messages. Whilst arguably there has been some progress in terms of society's general view towards the role and treatment of women, there remains some way to go before these views are fundamentally changed. The proliferation of new technology has meant that depictions of the commodification of women and the sexualisation of children is now more accessible, to the point of becoming mainstream (for instance through violent pornography or even mainstream media (Lim et al., 2015)). Images of female children dressed up to look like sexualised adults as well as adult women posing in infantilised positions are also common occurrences (Paul and Linz, 2008). At the very least, those who abuse others may use these facts to legitimise or excuse their behaviour. At worst, this may actually perpetuate this type of behaviour. Hence, whilst on the one hand the majority of society appears to abhor those who commit sexual offences, on the other hand feminist theory argues that in a patriarchal society abuse and oppression is widely accepted. Therefore, it may be considered that far from deviating from widely held values, those who abuse are actually acting within the patriarchal norms of society (Ward, 1985).

Schwartz et al. (2001) presented an interesting paper on a feminist approach to routine activity theory in which they examined the effect of peers as guardians who may prevent or encourage the offender. They argued that 'men who belong to these all male, patriarchal, homosocial networks are more likely than non-members to be motivated to abuse women sexually' (p. 628). This suggests that social control from a feminist perspective changes according to a particular ecological situation. Cossins (2000) also argued that gender is not a static factor but a construct of particular situations. This then implies that offending may be promoted by different socio-cultural contexts, peer involvement being one of them. There have been few studies that examined peer approval of or involvement in child abuse. One recent exception is Ashurst and McAlinden (2015), who found that young people participating in harmful sexual behaviour could very much be influenced by their peers. It is also thought that there may be a certain level of networking amongst those who commit sexual offences (Hanson and Scott, 1996), and this may be facilitated

by the growth of the internet: '[r]esearch demonstrates the strong sense of social support and reinforcement that child pornography offenders may experience as a result of their involvement in online networks' (Carr, 2012: 104)

Cognitive distortions

Cognitive distortions are one of the most commonly linked individual factors in respect of sexual offending. Put very simply, cognitive distortions are ways of viewing and interpreting the world around us which may not necessarily reflect the reality. In the case of sexual offending, these may be ways of justifying the offence. It is also thought that those who commit sexual offences develop implicit theories, based on cognitive distortions, which are unconscious scripts about their own and the victims' actions. These may be beliefs that they are not doing anything wrong and that societal beliefs are wrong when they consider the harm caused by sexual offences. This is said to explain why they offend when it is against the law and moral code of society, as their internal belief system can justify the act. These implicit theories may include beliefs that children are sexual beings and willing participants (Polascheck and Ward, 2002; Ward and Keenan, 1999), or that men are entitled to sex and it is a woman's (or sometimes a child's) responsibility to meet these needs.

However, there is also a theoretical argument, based on the feminist perspective, that cognitive distortions may be influenced by socio-cultural elements. Gagnon (1990) described different levels of sexual scripts that indicate how to behave in a sexual encounter: internal, interpersonal and cultural. The cultural script tells a person what is allowed according to the norms and values of society. In addition to cognitive elements distorting these scripts, socio-cultural views may also confirm these unhealthy attitudes towards relationships. Finkelhor (1984) also posited that social attitudes may act to overcome internal inhibitors to committing the offence. The radical feminist perspective (outlined in Ward et al., 2006: 169) also argues that 'features commonly noted in sexual offenders (e.g. cognitive distortions) are derived from being socialised as males and not from any unique characteristics associated with being sexual offenders'.

For example, Griffin (1979: 188) argued that '[h]eterosexual love finds an erotic expression through male dominance and female submission'. Seal and Ehrhardt (2003: 302) described one of the discourses for sexual intimacy for heterosexual men as sex as conquest. As one interviewee in their study stated:

> . . [d]ating is all about sexual harassment—sort of pushing the limits to see how far the other person is willing to let you go. Society believes that it is the man's role to test the waters It is certainly expected by women.

Whilst this may be viewed as an implicit theory, it is arguably one held by a substantial number of people in society. This is echoed by Cowley (2014: 1262), who argued that, 'the normative elements of the traditional heterosexual sex script are eerily similar to the events that precede a sexual assault'. Similarly, other views, such as that a rape is a less serious offence if a woman is under the influence of alcohol, dressed in a certain way or has consented to some sexual activity, are also not limited to those who have been con-

victed of sexual offences. Therefore, what are sometimes perceived as cognitive distortions may actually be commonly held societal beliefs.

Discussion of the above issues has outlined the fact that there is no theoretical reason that sexual offending should not be sensitive to different social and cultural contexts. This is important to consider from a preventative point of view, although there may be some theoretical differences when compared with non-sexual offending. For instance, becoming a caregiver may result in a sexual offence either owing to opportunity or altering attachments. On the other hand, becoming a caregiver may prevent a person being involved in non-sexual offending since this activity may compromise the care they are able to give the child. Consequently, different offending patterns may appear over the life-course for sexual and non-sexual offences. Nevertheless, this viewpoint would lead us to believe that propensity towards sexual offending behaviour is something that can be lessened in the right environmental conditions.

Finally, there is some suggestion that situational factors or opportunity may provide the impetus for a sexual offence. Ouimet and Proux (1994) found some evidence that recidivism was increased for people who commit sexual offences against children whose routine activities took them in higher proximity to children. Farmer et al. (2015) also found that many of their interviewees had viewed their offending as something that had occurred in a particular situational context, that they had not sought out that particular situation and that they had been surprised to find themselves offending (although, as Farmer et al. pointed out, there may have been an element of shame management involved in their accounts). Whilst there are likely to be other factors involved in addition to situational events, it certainly seems to be a substantial contributory factor (Beauregard and Leclere, 2007; Beauregard et al., 2007).

Desistance theories

The previous section has outlined some of the key causal factors in terms of sexual offending, and how these may also be influenced by socio-cultural elements. It is of particular importance to consider the role of these socio-structural contexts in relation to whether or not a person re-offends after their initial offence, as this is the stage at which intervention is most commonly carried out.

Desistance theories attempt to explain the journey from (arguably) relatively persistent offending to an offence-free life. Having generally stemmed from research into non-sexual offending, they are approached from a different perspective to the general literature on sexual recidivism, which is more often based on a treatment perspective. The desistance process is generally thought to be a combination of agency and environmental factors/informal social controls (Farrall et al., 2010; Laws and Ward, 2011), along with a cognitive shift (Maruna, 2001). In terms of the environmental factors, similar common life events are suggested to promote the desistence process as those thought to prevent the offending process (such as social relationships and employment), although there is a distinction in that there is thought to be a substantial element of having reconsidered one's life as a consequence of the offence.

There is some debate about the extent to which the factors which promote desistance after the commission of the offence mirror the initial cause. Laub and Sampson (2001)

suggested that the predictors of desistance are the same as (or the reverse of) the predictors for offending, although others disagree (Stouthamer-Loeber et al., 2002; Uggen and Piliaven, 1998). As stated, similar environmental events are generally suggested in relation to the promotion of desistance (relationships, employment, etc. (LeBel et al., 2008)), however whilst this may be true on an aggregate level, this is not necessarily true on an individual level. Desistance research looks at how the decision not to re-offend may be supported (or not undermined) by life events, rather than being directly related to causal elements, although these events may sometimes be similar. However, if cause and desistance are not related, this provides more evidence that desistance processes for sexual and non-sexual re-offences may be aligned.

Inevitably, though, the desistance process will have the added complication of having been an 'offender'. As Farrall et al. (2010: 548) argued, 'the process of having been convicted as a recidivist adult offender entails a degree of *social exclusion*, and – unless the offender is exceptionally fortunate – probably also an element of rupture of pre-existing social ties'. In addition to the decision to change, the desisting ex-offender will face societal difficulties that he or she did not face prior to the offence, which may be exacerbated for those who have committed sexual offences. Conversely, being detected as an offender and the subsequent associated events may also be a factor in an identity shift: '[p]ositive events are rather unlikely to elicit self-evaluative needs' (Gobbels et al., 2012: 456).

Desistance from sexual offending

Laws and Ward (2011. 99) stated that in respect of current treatment of those convicted of sexual offences, the:

> . . etiological assumption appears to be that sexual offending is a product of faulty social learning and individuals commit sexual offenses because they have a number of skill deficits that make it difficult for them to seek reinforcement in socially acceptable ways.

A key distinction between desistance and rehabilitation research outlined by Laws and Ward is that from a desistance perspective, changes occur 'outside the direct orbit of influence of practitioners' (p. 204): in fact for many non-sexual offenders (and arguably many sexual offenders) this change occurs without intervention. Laws and Ward also argued that 'correctional practitioners concentrate on deficiencies whereas desistence researchers pay more attention to the presence of protective factors' (p. 206). Whilst socio-structural factors are increasingly coming to attention in respect of sexual offending, it should be noted that those in the practitioner field do not generally advocate moving away from treatment of offenders and relying on 'natural' desistance supported by changes in environment, as criminological researchers have previously been more inclined to do (Laws and Ward, 2011). However, there has been a move to incorporate both psychological and socio-structural elements. Models such as the Good Lives Model (Laws and Ward, 2011) increasingly align these two different approaches.

Literature on desistance from sexual offending is in its infancy, although a small number of recent studies have looked at sexual offending through a desistance lens (e.g. Farmer et al., 2015; McAlinden et al., 2016). These studies have generally found support

both for the socio-structural (such as employment and social support) and self-narrative aspects of traditional desistance research Some desistance theories also incorporate psychological, socio-structural and self-narrative factors (e.g. Gobbels et al , 2012) Whilst desistance research (and practice) has traditionally come from a different perspective to that of the rehabilitation of those who have committed sexual offences, theoretically these approaches can be aligned for two reasons. Firstly, this article has outlined the evidence that there is a socio-cultural element to sexual offending, which is one of the key elements of desistance research. Moreover, if the desistance and causal processes are separate, this provides more weight to the argument, since desistance theories may operate *regardless of cause*

General criminological theory and the relationship between cause, resistance and desistance

Thus far, I have discussed how causal and desistance elements of sexual offending may be prone to socio-structural influences throughout the life-course. There are also influential theoretical standpoints from the general criminological field that the cause of any offence is less important than the fact that it is an offence. This final section will discuss the role of some of the most well-known general criminological theories in relation to causal and desistance factors, and whether these are important to our theoretical understanding of sexual offending.

Social control theories posit that a person's desire to commit a certain act is overcome by the moral code of a certain community or wider society (Hirschi, 1969). A person conforms to this code because if they do not, they risk losing something; that is, whatever benefits being part of this society brings them. Similarly, rational choice theory suggests that individual actors weigh up the consequences to themselves of embarking on a particular course of action (Clarke and Cornish, 1985). Thus, the main focus is not the act itself, but the commission of the act despite it being against commonly accepted societal, moral or legal rules. Laws and Ward (2011· 208) argued that criminological (desistance in this case, however it may also be applied to causal theories) theories are 'weaker when it comes to explaining why people (and offenders) are motivated to desire and seek certain outcomes'. Of course, they do not necessarily seek to do this.

These theories therefore assume that the act has crossed our mind or is an attractive proposition: indeed, the main question is not 'why do you want to do this?', but 'how do you stop yourself doing this?'. The motivation to commit sexual offences is often harder to understand than for non-sexual offences. However, if we view intimacy, power and control (as outlined in the theories about causation) as desirable goods, this may take us closer to theoretical similarities between those who commit sexual offences and other offenders. As Willis et al (2012: 126) pointed out, the issue is with the 'secondary goods—the activities/means individuals use to achieve primary goods—and not the primary goods themselves'. Viewing them in this way makes the connection between sexual and non-sexual offending clearer.

The act of a person countering their desire either in order to conform with those around them or to weigh up the negative and positive consequences of their actions is important as it implies a propensity to offend may be addressed *regardless of cause*

This, then, suggests that an internal desire may be countered by external processes. There is some evidence that this is the case with sexual offences. For example, Laws (1994) found that in his study, the control group who had never committed a sexual offence were found to have some overlap in fantasies of rape and child abuse, arguing that they 'harbour many of the same feelings, have the same fantasies, but fail to act upon them' (p. 8). This, then, is relevant to the causal process, since what needs to be altered is not the desire to commit the act, but the decision, the ability, and the environmental conditions required in order to resist this desire. The original 'cause' is less important than the decision to resist. This is not necessarily in opposition to psychological theories: for instance, different attachment styles can affect self-control: '[i]nsecure personal attachments and weak social attachments in turn lead to general problems with individuals' capacity for and commitment to self-restraint' (McKillop et al., 2012). Of course, the whole process is likely to be a complex and individual one as is noted in the integrated theories.

This also appears to be particularly true of the desistence process after offending. Some people who have committed sexual offences state that a fear of returning to prison is the main reason they do not wish to re-offend (Ward and Laws, 2010). This is in line with Maruna's findings (2001) that few desisting ex-offenders came to the conclusion that an offence was wrong, only that the paths that they were on had a negative impact on their lives. Farmer et al. (2015) also found in their study that 'in the early stages of desistance, they [people who had committed sexual offences and who had desisted] made a rational choice about their behaviour based on a growing realisation of the disadvantages of persistence' (p. 328). This was based partly on the realisation of the harm caused by the offence, but partly on the concerns about the likelihood of being caught. This may be considered similar to many criminological theories that assume that the reason most people do not commit crime is because they fear the consequences, whether these are social or judicial, and as previously stated the consequences of detection may have been the starting point for a change in self-identity. This would suggest that addressing the willingness to commit an act that is against societal rules *regardless of what caused the desire to commit this act*, is an important part of the desistance process. In this way, sexual offences may be considered in a similar theoretical manner to other offences.

The substantial interaction between sexual and non-sexual offending appears particularly important here. People who commit sexual offences very often commit other offences (Hanson and Bussiere, 1998) and in fact general rule-violation has been found to be a significant predictor of sexual recidivism (Hanson and Morton-Bourgon, 2005; Tewksbury et al, 2011). Offenders with a proclivity towards sexual offences are more likely to commit a range of offences if social bonds are already weakened. As Smallbone and Wortley (2004: 295) argued, 'men who already have some experience of serious rule-breaking, dishonesty, exploitation, and/or aggression may be more likely to take the opportunities to sexually abuse a child'. This suggests that those who do not have a propensity towards general criminal behaviour are less likely to take the opportunity to commit a sexual offence, however this does not necessarily mean that they do not want to. This is consistent with Ward and Siegert's (2006) pathways model, which describes 'antisocial cognitions' as being one pathway into sexual offending.

Conclusion

This article has considered the relationship between causal theories of sexual offending, desistance theories and general criminological theories, with a focus on how socio-cultural elements may be important in these processes The theoretical literature tends to support the case that propensity to offend, including relating to sexual offending, can and does change depending on different socio-structural circumstances, as well as for internal cognitive reasons. Decision-making in terms of the negative societal consequences of committing an offence also plays a part, particularly in terms of the desistance process This suggests that desistance from sexual offences is not dependent only on the original 'cause', certainly in respect of the causal theories discussed in this article, and also that the underlying desistance process is similar to that of those who have committed non-sexual offences

Whilst there is no reason to suppose that people who have committed sexual offences are not capable under the right conditions of desisting from crime, whether or not they follow the same course as other offenders is less clear, and there is a lack of empirical research into the relative importance of different life events that would assist a probation context. The point in life when these protective and risk factors occur, as well as opportunity, may be very different for those who have committed sexual offences compared to other offences For example, gaining employment or having a family may present an opportunity to someone inclined to commit a sexual offence, whereas arguably it is more likely to act as a protective factor for other offending The negative consequences of detection may also be more exacerbated for sexual offences than for other offences, in terms of additional stigma and labelling, and this may impede the desistance process In addition to this, there is a more fundamental issue of whether society implicitly condones such behaviour, as suggested by feminist theory. If propensity to offend is affected by the moral rules of society, then a society that continues to support the abuse and exploitation of women and children will inevitably continue to contribute to such actions

Of course, the difficulty lies in how we may support and encourage the desistance process amongst those who have committed sexual offences, as well as preventing these crimes from occurring in the first place. This article has argued that sexual offending is influenced by wider socio-cultural issues, and addressing these is an important yet challenging issue. There are many important treatment and educational programmes currently being developed that aim to help individuals deal with thoughts and situations that may lead to offending behaviour, and to assist them in replacing these with appropriate emotional and sexual attachments It is beyond the scope of this article to provide critique of these programmes Further research is needed into the impact of risk and protective factors throughout the life course in terms of sexual offences. Challenging the traditional normative masculine and feminine roles and preventing wider societal tacit approval of the abuse of women will also provide clearer boundaries of acceptable behaviour.

From a desistance perspective, following McNeill's (2012) framework of four forms of rehabilitation, in addition to assisting the individual with their personal process ('psychological rehabilitation'), there are three areas which require wider input from society as a whole It is important to address the potentially counterproductive nature of the

aftermath of the judicial process ('legal/judicial rehabilitation'), which may be exacerbated for those who have committed sexual offences. Linked to this, perhaps the most difficult area in light of the embedded moral panic and increased stigma in relation to sexual offences, is seeking to improve society's contribution to the desistance process by accepting that those who have committed a sexual offence may desist the same as everyone else ('social rehabilitation'). As Laws and Ward (2011: 109) argued: 'the delivery of treatment is not enough. We need also to be seeking to strengthen offenders' social networks and their relationship to the world beyond the therapy room'. It is this issue that artificially constructed social environments such as the Circles of Support and Accountability (Wilson et al., 2007) aim to address; by creating the type of environment in which it is thought the desistance process is most encouraged.

Furthermore, McNeill (2012) makes an excellent point about 'moral rehabilitation', in which reparation cannot be overlooked. Restorative justice, for instance, is still in its early stages for sexual offences and has been somewhat controversial, however early research suggests positive findings (e.g. McGlynn et al., 2012), and it may give back a sense of power and control to the victim. It may also be argued that the issue of reparation may not lie solely with the offender in the case of sexual offences, but potentially with the criminal justice system in some cases (which may have re-victimised or blamed the victim), and even wider society, which provided the environment that facilitated the abuse. This reparation may take the form of allowing the victim's voice to be heard and preventing societal approval of such abuse in the future.

These theoretical reflections emphasise the need for further research to consider the socio-cultural aspects of the offending and desistance process from the perspective of those who have committed sexual offences, and to consider how we may use this information to prevent offending and encourage desistance in the future.

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Criminal Careers in the Short-Term: Intra-Individual Variability in Crime and Its Relation to Local Life Circumstances

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CRIMINAL CAREERS IN THE SHORT-TERM: INTRA-INDIVIDUAL VARIABILITY IN CRIME AND ITS RELATION TO LOCAL LIFE CIRCUMSTANCES*

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We analyze month-to-month variations in offending and life circumstances of convicted felons to understand change in criminal behavior. We extend previous applications of social control theory by considering whether local life circumstances that strengthen or weaken social bonds influence offending over relatively short periods of time. We seek to determine whether formal and informal mechanisms of social control affect the likelihood of committing nine major felonies. We employ a hierarchical linear model that provides a within-individual analysis as we explore factors that determine the pattern of offending. The results suggest that meaningful short-term change in involvement in crime is strongly related to variation in local life circumstances.

Issues of continuity and change have recently come to the fore in criminology. Two influential theoretical statements have focused on the continuity in criminal behavior and challenged the importance of social factors during adulthood (Wilson and Herrnstein 1985; Gottfredson and Hirschi 1990). Both theories assume that a basic propensity to commit crime is *established early in life and persists throughout the life course.* This propensity is the key to understanding criminal behavior. This view implies that life events after childhood are of little, if any, explanatory importance. Thus, events such as changes in position in the social structure or assumption of new roles that increase social integration would have no bearing on adult crime.

Sampson and Laub (1993) took a very different perspective in their life-span approach to the study of crime. While they acknowledged that measures of illegal behavior are highly correlated over time, they argued that such continuity does not preclude large and systematic changes for many individuals. Their empirical research, which tracked individuals across large segments of the life-span, documented substantial changes in offending. They explain these patterns of change in terms of variation in social control.

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The purpose of the present study is to fill an important gap in our knowledge about change in criminal behavior during adulthood. Rather than examine extended time periods, we conduct a fine-grained analysis of month-to-month change in criminal behavior over three years for a sample of serious offenders. Thus, we forego the broad sweep of trajectories over the life-span in favor of a more detailed mapping of the correspondence between offending and current circumstances.

SOCIOLOGICAL THEORY AND CRIME BY ADULTS

Although the sociological tradition is compatible with the study of changes in offending during adulthood, most work on this topic stems from other traditions, such as developmental perspectives (Moffitt 1993; Patterson and Yoerger 1993) and the criminal careers perspective (Blumstein, Cohen, Roth, and Visher 1986). The limited role of sociology in this area is perhaps understandable in that prominent sociological theories primarily concern juvenile delinquency rather than adult crime. For instance, Shaw and McKay's (1942) classic theory of social disorganization portrayed delinquency as arising from adults' inability to supervise their children's activities, and there is no obvious generalization to crime by adults.

Other sociological theories are more pertinent to adult offending, either because they entail types of socialization that have long-term implications or because they specify general social processes that are not limited to a particular age. An example of the first type of theory is Cohen's (1955) strain theory, which explains delinquency as stemming from socialization that leaves lower-class adolescents unprepared to compete by middle-class standards. Differential association theory (Sutherland and Cressey 1955) and its social learning variations (Akers 1985; Elliott, Huizinga, and Ageton 1985) exemplify the second type of theory—they predict that changing from a conventional peer or reference group to a deviant one leads to crime, regardless of age. It is not simply associations that create change, but rather the learning or influence that follows from such associations, which takes time. These two types of theory imply that change in criminal behavior is nonexistent or very gradual. Thus, these theories do not predict the month-to-month correspondence between offending and social factors that we investigate in the present study.

Two other veins of sociological theory imply more immediate effects of changing life circumstances during adulthood. Social control theory, as described in Hirschi's early work, proposes that social bonds prevent crime and deviance (Hirschi 1969). Because crime results directly from the absence of bonds rather than from some mediating process, social control theory predicts relatively rapid changes in criminal behavior in response to changing life circumstances. Immediate effects also follow from rational choice or opportunity theories, such as routine activities theory (Cohen and Felson 1979). This approach emphasizes the role of social conditions in creating situations conducive to crime. When applied to individual offending, routine activities theory predicts that adults' involvement in crime will increase or decrease as their roles and relationships change their "daily round" of activities so as to present more or fewer opportunities for offending.

LONGITUDINAL DESIGNS AND THE ANALYSIS OF CHANGE

A reliance on cross-sectional designs has limited the ability of criminologists to study change. Cross-sectional designs preclude separating the effects of extrinsic variables from the effects of enduring individual differences. For example, the finding that men in stable marriages commit fewer crimes than those not involved in such relationships can be interpreted either as evidence of the social control function of marriage or as evidence that offending and failure to develop a stable marriage are both indicators of a single underlying trait, such as self-control. Thus, Farrington (1988, 1992) and others have argued that longitudinal research designs are needed to appropriately address questions relating to change in criminal behavior.

Even when longitudinal data have been collected, analyses have rarely assessed within-individual change, such as determin-

ing whether individuals commit more crimes when unemployed than when employed. Most longitudinal data currently available for studying criminal behavior were obtained infrequently, thus making the analysis of within-individual change difficult, if not impossible. With widely spaced waves of data collection and correspondingly few alternations of conditions, there must be greater dependence on aggregation in order to have enough variability to study. Nagin and Farrington (1992a, 1992b) demonstrated how relationships detected through the cross-sectional analysis of longitudinal data can be spurious and suggested the use of statistical methods that control for "persistent unobserved heterogeneity" (i.e., stable individual differences in rates of offending).

Gottfredson and Hirschi (1990) argued that longitudinal designs intended to study changes in offending offer no real advantage and waste resources because there is *little reason to believe that ordinary events are important determinants of offending*. In fact, they contended "that crime-relevant characteristics of people cause all of these events" (p. 237). Testing this contention requires analyses of within-individual change.

CONCEPTIONS OF CHANGE IN CRIMINAL BEHAVIOR

One of the most comprehensive longitudinal data sets in criminological research was collected by Glueck and Glueck (1950). Challenging the notion that ordinary events do not matter, Sampson and Laub (1990, 1993; Laub and Sampson 1993) re-analyzed the Gluecks' data using more sophisticated techniques and evaluated the findings in light of current theory. In their "sociogenic" theoretical model, they proposed that regardless of an individual's delinquent or antisocial background, criminal behavior would still be influenced in adulthood by institutions of informal social control, such as family or work. Thus, from a social control approach, Sampson and Laub (1990) suggested that "childhood pathways to crime and deviance can be significantly modified over the life course by adult social bonds" (p. 611).

The Gluecks' data came from interviews at ages 14, 25, and 32 with delinquent and nondelinquent boys matched on a number of social variables. Sampson and Laub (1990, 1993) constructed an overall measure of crime frequency and considered its relation to three key independent variables: job stability, commitment (a combined measure of the respondent's work, education, and economic ambitions), and attachment to spouse. They controlled for criminal "propensity" by performing separate analyses for the delinquent and nondelinquent samples and by studying relationships within a given age range while controlling for delinquency at earlier ages. Although they found clear evidence of stability of offending over time, job stability and marital attachment emerged as significant predictors of adult crime and deviance, even after childhood delinquency and crime in young adulthood were controlled. Accordingly, Sampson and Laub (1990) concluded that "both continuity and change are evident, and that trajectories of crime and deviance are systematically modified by social bonds to adult institutions of informal social control" (p. 625).

Laub and Sampson (1993) discussed the nature of change and provided illustrations of three kinds of change. What Caspi and Moffitt (1993) refer to as "systematic" or "deep" change is depicted by a high-rate offender who ceases offending completely, whereas what Laub and Sampson called "modified" change is exemplified when a high-rate offender starts offending at a lower rate. A third kind of change is illustrated by an offender switching from burglary to robbery. Although Laub and Sampson were most interested in the first two kinds of change, all fit within their conceptualization of change. Appropriate to their life-course perspective and their focus on the alteration of life trajectories, they implicitly conceptualize change as an enduring modification of behavior patterns.

Laub and Sampson's (1993) perspective also led them to look to the role of institutions, such as employment and marriage, to understand how social bonds structure the process of change. Transitions into such institutions are traditionally considered to be unidirectional (i.e., these transitions represent stages of development or permanent changes in state). A young man joins the work force or marries and starts a family, and his social investment in these institutions ac-

cumulates from that point on. Nevertheless, adult lives are not always so orderly, especially the lives of serious criminal offenders. Not only do role transitions often fail to follow an orderly progression (Rindfuss, Swicegood, and Rosenfeld 1987), but reversals of transitions may be common, as when employment is terminated or a marriage is dissolved. In their qualitative analysis of the life-history records of men from the Gluecks' study, Laub and Sampson (1993) described how some men experienced declines in job stability when the labor market changed and how others, who had married and initially got along well with their spouses, had marriages unravel ("there were separations, followed by reconciliations, followed by further separations" [p. 317]). When these scenarios were played out, "crime and deviance became more pronounced over time due to the severing of social ties to work and family" (p. 317).

Sampson and Laub (1990, 1993) have made a major contribution to criminology by showing that a focus on stability or continuity of offending is insufficient for understanding adult criminal behavior. By showing how adult social bonds can alter life trajectories, they demonstrated that change matters. The long-term view of change Sampson and Laub provided can be seen only when looking back on a relatively long segment of an individual's life course. It is also the only picture of change that can emerge when our view of the life course is constructed from infrequent measurements. We believe it may also be productive to consider a short-term view of change and ask whether levels of criminal activity shift in response to alterations in "local life circumstances." We introduce the term "local life circumstances" to emphasize conditions in an individual's life that can fluctuate relatively frequently. Because these life circumstances may be constantly shifting, any resulting changes in criminal behavior may be transient rather than enduring. The same circumstances that lead one person to an altered life trajectory because the circumstances endure (a stable marriage, for example), may produce only transient change in another individual if the circumstances are fleeting (a marriage that lasts only a few months or years).

LOCAL LIFE CIRCUMSTANCES AND SHORT-TERM VARIATION IN CRIMINAL CAREERS

Within the criminal careers paradigm (Blumstein et al. 1986), the study of change has emphasized the determinants of career initiation or termination; persistence in offending has generally been viewed simply as the converse of desistence. Research on persisting careers has focused almost exclusively on the frequency of committing crimes (incidence) and has generally assumed that offending occurs at a constant rate.

There have been few attempts to look at within-individual variability in offending over relatively short periods of time. Horney and Marshall (1991) found that incarcerated offenders described considerable month-to-month variability in levels of offending, and that activity patterns varied by type of crime. Nagin and Land (1993) found that models of offending that incorporate an intermittency parameter that allowed for periods of activity and inactivity performed better than models without such a parameter. Thus, they established that there is genuine within-individual change over time in offending. They observed, however, that "notwithstanding its contribution to the model fit, the concept of intermittency is problematic because a promising theoretical explanation for why it should occur has yet to be offered" (p. 357).

We believe one plausible explanation for intermittency is that the same kind of social control variables that Sampson and Laub (1990, 1993) found to alter trajectories of criminal offending are also responsible for short-term variation in criminal behavior. In other words, whether an individual offends at a particular time depends on whether he or she is employed, married, or going to school at that time. Although a persistent underlying trait like self-control can influence both an individual's overall level of offending and his or her overall stability of marriage and employment, that shared influence does not mean that a relationship between offending and the life circumstance is necessarily spurious. It is still possible that involvement in those social institutions influences the likelihood of offending *during the time of involvement*. The high crime rate of the most persistent offender, rather than in-

dicating a total lack of investment in social institutions, may instead reflect alternating periods of criminal activity and inactivity. A coherent causal pattern would be indicated if the relatively infrequent and brief periods of inactivity correspond to sporadic episodes of social bonding.

Some theorists have dealt with the role of more localized life circumstances in determining criminal offending. Farrington (1992), for example, asserted that

> . . . short-term, situationally-induced motivating factors that are conducive to offending include boredom, frustration, alcohol consumption, getting fired from a job, or quarrelling with a wife or girlfriend. Slightly longer-lasting life circumstances or events may also be important, such as unemployment, drug addiction, and shortage of money. (P. 278)

Unfortunately, empirical evidence of relationships between such factors and offending is scarce.

Farrington, Gallagher, Morley, St. Ledger, and West (1986) analyzed data from the Cambridge Youth Study, which was collected in two-year waves, and found that boys in their sample had higher crime rates during periods of unemployment than they did during periods of employment. Unfortunately, their analysis was hampered by the fact that only 95 of the 399 youths had committed offenses, and only 11 had at least one offense when unemployed and one offense when employed. The authors appropriately noted a self-selection problem—that the youths who were unemployed could differ in many ways from those who were employed, and the higher crime rate during unemployment could occur because both variables were related to some other causal factor. They attempted to control for this possibility by restricting the analysis to youths who had been unemployed and had committed officially recorded crimes, but this resulted in very small numbers of youths. When, in their "most important test of the effect of unemployment" (p. 345) they also required minimum periods of unemployment, the resulting analysis was based on only 36 youths. The authors suggested that to determine whether individual offending varies with conditions like employment, larger samples and samples of persons with relatively high offending rates must be studied.

THE CURRENT STUDY

In the current study, we explore the role of local life circumstances as determinants of change in criminal behavior. Our data were obtained through a retrospective survey in which more than 600 serious offenders provided a month-by-month account of criminal offenses and local life circumstances. Our analysis extends Sampson and Laub's (1993) application of social control theory to criminal career trajectories by considering whether local life circumstances that strengthen or weaken social bonds influence offending over relatively short periods of time. We focus on informal mechanisms of social control and ask if the likelihood of offending is affected by going to school, being employed, living with a wife or girlfriend, drinking heavily, or using drugs. We also consider the impact of formal social control mechanisms by asking whether individuals are less likely to offend when they are on probation or parole. We employ hierarchical linear modeling to obtain a within-individual analysis of factors that determine the patterning of offending.

METHODOLOGY

The data presented here are based on interviews conducted with 658 newly convicted male offenders sentenced to the Nebraska Department of Correctional Services during a nine-month period in 1989–1990. A few inmates incarcerated during that time could not be interviewed for various logistical reasons; 94 percent of those invited to participate completed interviews. This sample was 57.3 percent White and had a mean age of 28.1 years. Although this sample is not representative of the general population, it is suited to addressing the impact on criminal behaviors of changes in local life circumstances. The short-term variability we wish to study is far greater in this sample than it is in most others, owing to the prison respondents' high rates of offending and the considerable instability of their lives in terms of marriage, employment, and so forth.

Because we sampled incarcerated offenders, our sample is not representative of the general population of offenders. We must assume we have oversampled men who com-

mit more crimes, those who commit crimes for which it is easier to be caught and convicted, and those who are less able to avoid detection

Survey Instrument

We used a modified version of a survey instrument used in the RAND Corporation's Second Inmate Survey (Chaiken and Chaiken 1982) The 48-page instrument generally required a 45- to 90-minute interview. In the critical section of the interview, two calendars—an "event calendar," and a "crime calendar"—were used to establish the reference period and to record detailed information. Respondents were asked to consider a reference period based on the date of the arrest that led to the current incarceration. The reference period included the months up to and including the month of arrest for the calendar year of arrest and the two calendar years preceding the year of arrest. The measurement periods thus varied across respondents from 25 months to 36 months. All months outside the reference period as well as any months during which the respondent had been locked up were crossed out on the calendars. The remaining months were considered "street months."

The event calendar was then used to record various life circumstances. The respondent was asked to identify those street months during which he had been on probation, on parole, going to school, working, living with a wife, living with a girlfriend, drinking heavily, or using drugs (other than prescription drugs or marijuana). The interviewer placed a check beside the appropriate items for those months. The crime calendar was created in the same manner to determine the months during which the respondent committed any burglaries, personal robberies, business robberies, assaults, thefts, auto thefts, frauds, forgeries, or drug deals.

Research indicating that personal memories are organized as "autobiographical sequences" (Bradburn, Rips, and Shevell 1987) suggests that the use of life-history calendars helps to facilitate recall. Evidence of the reliability of retrospective data collected through life-history calendars is available from studies that have gathered the retrospective data within a longitudinal research design. Freedman, Thornton, Camburn, Alwin, and Young-DeMarco (1988) found that 91 percent of respondents gave identical answers about 1980 school attendance (whether attending school in a particular month) in 1980 interviews and 1985 interviews, while 83 percent gave identical responses about employment

In a similar study, Caspi and Amell (1994) used a life-history calendar to obtain retrospective data about monthly life events that had been concurrently reported three years earlier They compared reports of whether the respondent was living with parents, cohabiting with a partner, the primary caregiver for a child, attending school, involved in job training, employed, and searching for employment or receiving unemployment benefits. Over 90 percent of the reports matched with regard to status for the month of the first interview

Statistical Model

Hierarchical linear modeling (HLM), a generalization of multiple regression for nested or repeated-measures data, was developed by Bryk and Raudenbush (1992) and other statisticians Raudenbush (1993) presented a binomial version of the model that is suited to a research design like ours, which includes many waves of dichotomous data for each subject. We will first describe the HLM model for continuous data. Then we will turn to the distinctive features of the binomial version

HLM is one of several methods developed in recent years for analyzing data containing multiple observations for each individual. These methods provide a general format for analyses that allow effects to vary randomly across cases (Goldstein 1987, Mason, Wong, and Entwistle 1983), and they follow from earlier statistical developments extending random-coefficient models (Hsiao 1986, chap 6, esp. pp 151–53). These models can also be viewed as extensions or generalizations of analysis of variance for repeated-measures designs (Bryk and Raudenbush 1992:chap. 2) and as elaborations of models for "pooled time-series and cross-sections" found in econometrics (Sayrs 1989) We have chosen Bryk and Raudenbush's HLM because it is flexible and is described well in

available publications. Also, a computer program for implementing the version of the method for continuous data is commercially available (Bryk, Raudenbush, and Congdon 1993), and a version of HLM for dichotomous data has been developed.

Within-person model. HLM separates within-person and between-persons models, as in repeated-measures analysis of variance. These models are distinct, but closely linked, linear models. In an HLM analysis, the within-person model must be considered first because it determines the meaning of the between-persons model. Equation 1 presents the basic elements of the within-person models used in our analysis:

$$Y_{ij} = \beta_{0,i} + \beta_{1,i}T_{ij} + \beta_{2,i}X_{ij} + r_{ij}, \quad (1)$$

where i is the index for persons, j is the index for occasions, T is an interval measure of time (months in our study), and X is an explanatory variable that varies over time for at least some of the respondents. In our application the explanatory variable is a local life circumstance like employment or marriage.

Notice that the parameters, β, can take different values for different individuals because they carry the subscript i. $\beta_{0,i}$ is the individual's intercept, which will be the fitted value of the dependent variable, crime, when both T and X equal 0; $\beta_{1,i}$ is the amount this person's level of crime (Y) changes per unit of time; and r_{ij} corresponds to the unexplained variance for this specific observation on Y. Against the backdrop of the time trend for each individual, the outcome also varies as a function of the local life circumstance, and $\beta_{2,i}$ reflects the magnitude of this relationship.

Between-persons model. In most applications, including ours, the primary results of interest are the parameters of the between-persons model. In HLM, the individual-level parameters from the within-person model serve as dependent variables for the between-persons model, leading to a separate equation for each parameter:

$$\beta_{0,i} = \gamma_{0,0} + u_{0,i}; \quad (2)$$

$$\beta_{1,i} = \gamma_{1,0} + u_{1,i}; \quad (3)$$

$$\beta_{2,i} = \gamma_{2,0}. \quad (4)$$

In the general HLM model, these between-persons equations may include additional explanatory variables for characteristics that do not change over the period of study (e.g., race and sex), but this feature plays a minor role in the present study because our theoretical interests involve change in local life circumstances.[1] In the present study, the between-persons models are simple because each model involves a single parameter, γ (with one exception discussed below). In this case, the γ parameters reflect the average level of the corresponding within-person parameters, which in turn indicate individual-level intercepts, time trends, and effects of the local life circumstance.

Error terms. In equations 2 and 3, the person-specific error terms, $u_{0,i}$ and $u_{1,i}$, mean that the between-persons model treats $\beta_{0,i}$ and $\beta_{1,i}$ as random effects (i.e., as having meaningful variance across individuals). The error term in equation 2, $u_{0,i}$, allows for random variation in the form of individual differences in the average level of offending, which typically is the principal source of correlated error when applying ordinary least squares regression to panel data. This term appears in the variance-components models found in the pooled time-series literature (Sayrs 1989) and is equivalent to the persistent heterogeneity that is a central feature of Nagin and Farrington's work (1992a, 1992b).

Equation 3 shows how HLM generalizes this principle to other elements of the within-person model, making this a "random coefficients" model. In this case, the error term, $u_{1,i}$, reflects unexplained variability in linear time trends. Thus, including this error term allows the linear time trends to vary across individuals. This term helps correct for a second type of problem of independence because it allows for gradual change over time, which is a major source of serially correlated error. Equation 4 does not contain an error term because there is no a priori reason to assume that the effects of local life circumstances vary across individuals.

We can form an overview of the between-persons model by substituting equations 2, 3, and 4 into equation 1:

[1] Elaborating this aspect of the models, to assess whether the impact of local life circumstances varies across groups, would be an appropriate direction for future research.

$$Y_{ij} = \underbrace{\left(\gamma_{0,0} + \gamma_{1,0}T_{ij} + \gamma_{2,0}X_{ij}\right)}_{\text{[Effects on } Y\text{]}} + \underbrace{\left(u_{0,i} + u_{1,i}T_{ij} + r_{ij}\right)}_{\text{[Composite error term]}}. \quad (5)$$

This arrangement makes apparent the composite error term, which resolves the problems of independence that arise with multiple measures of Y for each respondent Similar composite error terms are characteristic of repeated-measures analysis of variance and variance components models for pooled time-series.

Within-person change. The estimate of the impact of the local life circumstance X that is captured by $\gamma_{2,0}$ in equation 4 represents the combined effects of differences between individuals in their average circumstances and within-person change over time in this circumstance (Bryk and Raudenbush 1992: 117–23) This is inappropriate because our substantive interest is in change. An estimate that is restricted to within-person change can be obtained by two modifications to the preceding equations. First, the values for X in equation 1 are transformed to deviations from each individual's mean calculated across the entire period of observations

$$X^*_{ij} = X_{ij} - \overline{X}_i .$$

Second, the individual means, $\overline{X}_i$, are included as an explanatory variable in the equation for overall individual differences (equation 2)

$$\beta_{0,i} = \gamma_{0,0} + \gamma_{0,1}\,\overline{X}_i + u_{0,i}$$

Under this formulation, $\gamma_{0,1}$ reflects the effects of between-persons differences in average local life circumstances, while $\gamma_{2,0}$ (from equation 4) satisfies our need for an estimator that reflects the effects of within-person change.[2]

[2] Fixed-effects estimators for panel data also restrict the analysis to within-individual change Both the fixed-effects approach and our approach limit the analysis to deviations from individual means on X In fixed-effect models the same transformation is applied to Y, whereas we accomplish the same result with random effects by including the individual mean of X as a predictor The fixed-effects approach is difficult to apply to discrete outcomes when there are more than a few waves of data (Greene 1990 686–88), but our model gives us one of its principal advantages

Model estimates. An HLM analysis yields estimates of the between-persons parameters, their standard errors, and their statistical significance. The results also include estimates of the magnitude and reliability of the variance components of random effects HLM uses the covariances among the errors of the βs to derive generalized least squares estimates of the γs. In this fashion, HLM capitalizes on any interdependence among the within-person components to increase the efficiency of the estimates and to gauge their standard errors. Bryk and Raudenbush (1992) presented the statistical theory underlying HLM in an extended treatment that is not highly technical The method relies on iterative estimates of the true variance and the error variance of the $\beta_{k,i}$, which are derived through a Bayesian weighting of information from the within-person and between-persons portions of the analysis. HLM also capitalizes on the EM algorithm, developed by Dempster et al. (1977), to make use of data from all respondents, including respondents with insufficient data for separate estimation of the within-person parameters. As with most methods for analyzing continuous dependent variables, HLM assumes that errors for particular observations, $r_{i,j}$, are normally distributed. Furthermore, treatment of the within-person parameters as random effects requires specification of their error distributions, and these error terms, $u_{1,i}$, are also assumed to be normally distributed.

The HLM model does not require that each person provide data on any particular set of occasions, which means that the method is suitable for irregular data sets, unlike many other approaches to analyzing panel data. This flexibility arises because the parameters of interest, the between-persons parameters, γ, are defined in relation to the within-person parameters, β. Thus, the analysis does not hinge on having a particular set of observation times for Y, but rather on the available observations of Y providing enough information to estimate the individual-level βs HLM gauges the precision of these person-specific estimates from information such as the number of data points and the variances of Y, T, and X for the respondent

Binomial HLM. The statistical model for the binomial version of HLM closely follows the format of the basic HLM model (Rau-

denbush 1993). The within-person model becomes a logistic regression:

$$\log_n\left[odds\left(Y_{ij}=1\right)\right]=\beta_{0,i}+\beta_{1,i}T_{ij}+\beta_{2,i}X_{ij}. \quad (6)$$

Thus, the fitted values from the within-person model no longer refer directly to levels of Y. Instead this is a linear model of the logit, which is the natural logarithm of the odds that the dichotomous Y variable will take on the value 1, (i.e., an offense occurred this month) rather than the alternative value of 0 (i.e., no offense this month). Also, the within-person model no longer includes an error term because the logistic model is inherently probabilistic. This use of the logistic regression model brings to HLM a standard approach for correcting the problems that would result from applying ordinary least squares regression to a dichotomy.

Equations 2, 3, and 4 still define an appropriate between-persons model, despite the change to the logistic within-person model.[3] Of course, these equations now reflect average values of βs that are logistic coefficients rather than ordinary regression coefficients. No change in the between-persons model is necessary, however, because the within-person coefficients (which serve as the dependent variables) are continuous and have meaningful intervals. The generalized least squares derivation of the estimates of the between-persons parameters remains applicable, although the weighting of the variance components changes according to the precision of logistic regression estimates. Because the logistic regression model is nonlinear in relation to the observed values of Y, the estimation requires an iterative reweighting of the within-person data.

Our full model. Our analysis extends the simple model presented above in two respects. First, the analyses included seven local life circumstances rather than the single X in the example. All life circumstances are dichotomies (coded 1 if the feature is present and 0 if not) extracted from the event calendars in the same fashion as the measures of offending. The specific life circumstances are supervision by the justice system (probation or parole), attending school, working, living with a wife, living with a girlfriend, heavy alcohol use, and use of illicit drugs other than marijuana.

We also extended the simple model by including a more elaborate control for individual time trends. Because the analysis includes up to 36 waves of data for each respondent, it would be unreasonable to assume that individual time trends are so consistent as to be linear. Instead, the basic model allows greater flexibility in the time trend through a third-order polynomial function of time. The within-person intercept and all three powers of time were specified as random effects. As a result, changes over time in offending are attributed to substantive variables only if offending closely tracks that variable over time. More gradual or diffuse changes are instead attributed to the individual time trend.

The final element of the model is a dummy variable indicating the month of the arrest leading to the current incarceration.[4] This variable corrects the offense rate for this specific month, which is artificially high due to our sample selection criteria.

[3] The coefficients for the between-persons model represent conditional relationships in that the analysis controls for individual differences in overall rates of offending. Because the binomial model is nonlinear in relation to probabilities, these conditional within-individual relationships tend to be stronger than the marginal relationship of the explanatory variables to the average rates of offending for the entire population (Zeger, Liang, and Albert 1988). We report only conditional relationships because our focus is on change within individuals over time.

[4] The time variables were transformed to reduce the correlations among the components and improve the efficiency of the estimation of the model. These transformations have no impact on the substantive results of the model, but they must be taken into account in order to reproduce the average time curves. The last wave of data collection was given a value of 0 on the components of the polynomial of time, making the dummy code for the last month orthogonal to the other time components. To give the linear component a mean of 0 across persons, a value of 0 was assigned to 15.4 months before the final month. The squared term for month was this value multiplied by itself and divided by 10 (to reduce its range and place its coefficient in a more useful range). We subtracted 8 from the result, to give it a mean of 0. Finally, the cubed power of time was formed as the product of the linear and squared terms, divided by 10.

Fifty-three percent of the sample reported one or more offenses for this month versus 32 percent for all other months [5] Because this variable refers to a single month, it was defined as a fixed effect.

RESULTS

The analysis was limited to respondents who contributed information on the full set of variables for at least 10 "street months." Though HLM does not require any minimum number, respondents with fewer months of data would contribute little to the analysis. Only 41 of the 658 respondents failed to meet this criterion; the remaining 617 respondents provided data for an average of 28.36 months.

The analysis was conducted separately for each of four measures of offending. The first measure, "any crime," was coded 1 for months in which a respondent reported committing at least one of the nine felonies. The other measures of offending referred to specific crimes: property crime (burglary, personal robbery, business robbery, theft, auto theft, forgery, and fraud), assault, and drug crime (dealing). Table 1 reports descriptive information on the measures used in the analysis.

Because our analysis focuses on within-person change, our ability to detect the impact of local life circumstances is largely dependent on the number of respondents who experience change on those variables. Column 2 of Table 1 reports the proportion of respondents who had at least one transition during the period of study for each of the local life circumstances (e.g., from student to nonstudent or nonstudent to student, as opposed to always a student or never a student). Fully 85 percent of the sample experienced at least one transition over this interval of no more than three years, and over one-half experienced two or more transitions.

[5] The rate still falls well below 100 percent because: (1) arrest could occur more than a month after the actual offense; (2) a small proportion of respondents were incarcerated for offenses not included in the measure (e.g., drunk driving), and (3) some respondents claimed not to have committed the offense for which they were incarcerated, although they admitted to other offenses

Table 1. Descriptive Statistics for Variables Used in the Analyses: Male Offenders in Nebraska, 1989–1990

Variable	Proportion of Months	Proportion of Sample with Change in Status
Measures of Offending		
Any crime	33	
Property crime	11	
Assault	06	
Drug crime	23	
Explanatory Variables		
Probation or parole	11	25
School	11	25
Work	65	58
Live with wife	19	12
Live with girlfriend	29	30
Heavy drinking	28	19
Illegal drug use	.24	22

Note: N = 617 individuals; 17,500 street months

Summary Statistics for Change in Offending

Table 2 presents some simple summary statistics about the changes in offending following changes in local life circumstances. These statistics reflect periods that begin with a change in a local life circumstance (e.g., starting school) and end with either a change in offending (for our "any crime" measure), a subsequent change in that local life circumstance (e.g., stopping school), or the end of the period of observation. The odds of starting crime is computed for periods preceded by a month for which no crime was reported; it is the ratio of the number of instances in which a subsequent crime was reported divided by the number of instances in which no offense was reported throughout the period. The odds of stopping crime is the comparable ratio for periods preceded by a month in which an offense occurred. The odds ratios and log odds in Table 2 indicate that changes in offending depend on changes in local life circumstances. Thus, for men on probation or on parole, the odds ratio of .42 for starting crime (.69 divided by 1.63) indicates that the odds of starting to offend are

over twice as high after probation or parole stops as after the supervision starts The odds ratio of 74 for stopping crime (49 divided by 66) indicates that the odds of stopping crime are greater after probation or parole stops than after the supervision starts.

The results presented in Table 2 suggest that changes in offending systematically follow changes in local life circumstances Typically, the odds of a change in offending roughly double (or are halved) following a change in a local life circumstance, such as marriage, employment, or drug use Furthermore, the two directions of change in the explanatory variables typically have comparable relationships with criminal behavior, as is assumed in the HLM analysis For instance, moving in with one's wife doubles the odds of stopping offending (compared to moving away), and moving away from one's wife doubles the odds of starting to offend (compared to moving in) The largest discrepancy is for living with a girlfriend. The odds of stopping offending were considerably lower after moving away from a girlfriend, but starting to offend was unrelated to this variable The presence of a single discrepancy of this limited magnitude is not surprising from such a simple and ad hoc summary of the data

Variance Components

The HLM analyses provide greater statistical control and allow us to gauge the precision of our results. Table 3 shows results for the variance components of the model Estimates of variance components are provided for unconditional models, which include the time trends but not the explanatory variables, and conditional models, which include all variables. Preliminary analyses indicated that the higher-order elements of the polynomial time trend were not justified for some of the measures of offending For all measures, there was substantial variation in average level of offending, as reflected by the size and reliability of the variance components for the within-person intercepts This replicates Nagin and Farrington's (1992a, 1992b) finding that there are substantial individual differences in propensities to offend, and extends that finding to a prison population with a much higher overall rate of offending.

Table 2. Odds of Changes in Offending Following Changes in Local Life Circumstances: Male Offenders in Nebraska, 1989–1990

Life Circumstance	Odds of Crime Starting	Odds of Crime Stopping
Probation or Parole		
Starts	69	66
Stops	1 63	49
Odds ratio	42	74
Log odds	- 86	- 30
School		
Starts	33	36
Stops	76	25
Odds ratio	43	70
Log odds	- 84	- 35
Work		
Starts	33	36
Stops	76	25
Odds ratio	43	70
Log odds	- 84	- 35
Live with Wife		
Starts	62	75
Stops	1 20	42
Odds ratio	52	56
Log odds	- 66	- 59
Live with Girlfriend		
Starts	1 02	25
Stops	1 11	66
Odds ratio	92	2 64
Log odds	- 09	97
Heavy Drinking		
Starts	51	42
Stops	25	1 12
Odds ratio	2 09	2 67
Log odds	74	98
Illegal Drug Use		
Starts	59	20
Stops	27	37
Odds ratio	2 16	1 86
Log odds	77	62

Note Odds ratios greater than 1 and positive log odds indicate greater odds of starting crime after the local life circumstance starts and greater odds of stopping crime after the local life circumstance stops

Table 3. Variance Components for Random Effects in Binomial Hierarchical Linear Models: Male Offenders in Nebraska, 1989–1990

Type of Crime and Model Term	Unconditional Model			Conditional Model		
	Reliability	Variance	χ^2	Reliability	Variance	χ^2
Any Crime						
Intercept	81	11 298	4,398 2*	76	8 750	4,498 3*
Month	42	026	1,202 9*	40	025	1,157 0*
$(Month)^2$	26	011	763 0*	24	011	715 0*
$(Month)^3$	16	007	465 3	14	006	432 1
Property Crime						
Intercept	66	7 061	4,781.6*	62	6 161	3,957 4*
Month	.22	008	628 9	21	008	623 2
$(Month)^2$	16	007	513 3	16	007	507 8
Assault						
Intercept	56	4 799	3,922 4*	53	4 617	3,509 6*
Month	17	007	429 6	17	007	427 3
Drug Crime						
Intercept	72	14 324	5,445.0*	66	12 701	5,015 8*
Month	32	020	1,035 8*	30	022	932 2*
$(Month)^2$	21	013	624.7	18	012	523 7

*$p < .05$ (two-tailed tests)

Note All terms had 616 degrees of freedom, except the intercepts in the conditional models, which had 609

Effects of Local Life Circumstances

Table 4 reports the estimates of the within-person effects of local life circumstances from the binomial HLM analyses. The table includes the logistic coefficients, γ (as in γ_{20} in equation 4), their standard errors, and the odds ratios corresponding to the coefficients. (Coefficients for the time trends and between-persons differences in the local life circumstances, which are not of substantive interest for this analysis, are available on request from the authors.)

Use of illegal drugs was related to all four measures of offending. Use of drugs had an especially strong association with involvement in drug dealing—the logistic coefficient of 2.75 corresponds to a 15-fold increase in the odds of drug crime during months of drug use. Although the relationship of illegal drug use to property crimes and assaults is less extreme, it is still substantial During months of drug use, the odds of committing a property crime increased by 54 percent, and odds of committing an assault increased by over 100 percent. Combining these for the summary index, illegal drug use increased the odds of committing any crime by sixfold.

Our findings on the impact of drug use are consistent with studies of heroin addicts that have compared periods of addiction with periods of nonaddiction. Ball, Shaffer, and Nurco (1983) and Anglin and Speckart (1986) found substantially higher self-reported crime-commission rates during periods of addiction. Our results indicate that drug use apparently has the same kind of deleterious effects, even when a criterion less stringent than addiction is used (i.e., monthly use) and when drugs other than heroin are considered (i.e., illegal drugs other than marijuana, very few of our respondents used heroin).

Heavy drinking was positively related to the four measures of offending, significantly so for property offenses. Indeed, heavy drinking was more strongly related to commission of property crimes than was illicit

Table 4. Logistic Coefficients (γ) and Odds Ratios from Binomial Heirarchical Linear Models of Monthly Offending in Relation to Change in Life Circumstances: Male Offenders in Nebraska, 1989–1990

	Any Crime		Property Crime		Assault		Drug Crime	
Life Circumstance	γ	Odds Ratio	γ	Odds Ratio	γ	Odds Ratio	γ	Odds Ratio
Probation or parole	-.21	.81	-.27	.76	.06	1.06	.08	1.08
	(.20)		(.20)		(.22)		(.28)	
School	-.73*	.48	-.25	.78	-.17	.84	-.94*	.39
	(.18)		(.20)		(.23)		(.24)	
Work	.13	1.14	.25*	1.28	-.28	.76	.11	1.11
	(.11)		(.12)		(.16)		(.15)	
Live with wife	-.52	.59	-.19	.82	-.84*	.43	-.48	.62
	(.29)		(.31)		(.38)		(.39)	
Live with girlfriend	.50*	1.64	.25	1.28	-.06	.94	.49*	1.63
	(.17)		(.18)		(.23)		(.21)	
Heavy drinking	.39	1.48	.63*	1.88	.31	1.36	.53	1.71
	(.21)		(.23)		(.29)		(.29)	
Illegal drug use	1.81*	6.10	.43*	1.54	.73*	2.07	2.75*	15.70
	(.19)		(.20)		(.27)		(.25)	

*$p < .05$ (two-tailed tests)

Note. Numbers in parentheses are standard errors

drug use. Although not statistically significant, coefficients relating heavy drinking to commission of any crime and to commission of a drug crime are sizable as well. Their relatively large standard errors result from the limited number of individuals who had changes in their heavy drinking status (see Table 1).

Table 4 shows that living with a wife is associated with lower levels of offending, but living with a girlfriend is associated with higher levels. Living with a girlfriend significantly raised the odds of offending by over 64 percent for commission of any crime and for commission of a drug crime. The relationship of living with a wife to these measures of offending was of equal magnitude, but was not statistically significant (again because of the small number of individuals with change on this variable). There was a statistically significant decrease of 57 percent in the odds of committing an assault when living with a wife.

These results are in accord with Sampson and Laub's (1993) finding that marital attachment was one of the strongest predictors of adult criminality, even after childhood delinquency and early adult criminality were controlled. Their composite measure of marital attachment was based on interview data and included the respondent's assessment of the general marital relationship, his attitude toward marital responsibility, and, for the final wave of data, a measure of family cohesiveness. Although we do not have measures of marital attachment, we do have the comparison of living with a wife and living with a girlfriend. If we assume that formalizing a relationship through marriage indicates attachment, then the lesser attachment may explain why living with a girlfriend does not lower the odds of offending. We have no explanation for the unexpected increase in the odds of offending associated with living with a girlfriend.

Changing life circumstances in the domains of work and school also contributed to the odds of offending in any given month. Attending school had uniformly beneficial consequences, significantly reducing the odds of involvement in any crime by 52 percent and the odds of involvement in drug crimes by 61 percent. Working was only weakly related to all of the measures of offending. Surprisingly, the odds of committing a property crime increased by 28 percent in the months when men worked. Though this was statistically significant, it is exceeded by an opposite, but not significant, coefficient for commission of assault. Because changes

in work status were common, these coefficients have the smallest standard errors.

We viewed employment as an important aspect of social bonding that should reduce the likelihood of offending. Our crude measure (respondents simply reported whether they worked during a given month) may be responsible for the weak results on lowered odds of offending. We measured none of the aspects of attachment to a job that Sampson and Laub (1993) considered; our measure did not even distinguish part-time from full-time employment, or temporary from permanent work. The surprising increase in the odds for commission of a property crime may reflect the increased opportunities for theft and perhaps also for forgery or fraud that are available in the workplace. The only aspect of local life circumstances that was not related to any of the indices of offending was justice supervision in the form of probation or parole.

Reduced models. We also estimated two reduced models using subsets of the seven local life circumstances. One model excludes the substance use variables of heavy drinking and illegal drug use. This reduced model is useful for two purposes. First, it is informative about potential indirect effects that might be mediated by the impact of substance use. Attending school, being employed, and living with a wife could reduce crime indirectly by reducing substance use. Comparing this reduced model to the full model gives little evidence of this. Relationships that were significant in the full model typically changed little when we did not control for substance use. There was one notable change, however: Living with a wife became significantly and negatively related to the general measure of crime ($\gamma = -.61$, s.e. = .29), which adds consistency to the previous pattern of results. Nevertheless, it does not appear that controlling for substance use obscured important effects.

This reduced model is also of interest because the causal role of the substance use variables is subject to an alternative interpretation. Heavy alcohol use and illegal drug use are deviant or conventionally disapproved behaviors, as are our measures of crime. Thus, rather than influencing crime, these behaviors may be alternative manifestations of the same factors that lead to crime (Osgood, Johnston, O'Malley, and Bachman 1988:81–83). That would imply that their relationship is spurious rather than causal, an issue that the present analysis cannot resolve. The reduced model is useful in this regard because it provides estimates of the effects of the other local life circumstances, unbiased by any potential spurious relationship between crime and substance use.

The second reduced model concerns probation or parole, the only local life circumstance that was not related to any of the indices of offending in the full models. These results may arise because the impact of probation or parole is indirect, being mediated by intermediate effects of supervision, such as reducing illegal drug use and promoting employment. The second reduced model addresses this possibility by excluding all measures of local life circumstances other than justice supervision, thereby ruling out any indirect effects. Even in this model, there are no significant effects of justice supervision on offending. Though three of the four coefficients indicate lower rates of offending during justice supervision, the relationships are weak, reflecting a 26 percent reduction in odds of offending at most. Clearly, justice supervision did not produce substantial reductions in crime among these serious offenders. These results are consistent with previous findings in the perceptual deterrence literature that the threat of formal sanctions is much less effective in altering behavior than are informal processes of social control (Paternoster and Iovanni 1986; Paternoster, Saltzman, Waldo, and Chiricos 1983).

DISCUSSION

Our results provide clear evidence of meaningful short-term change in involvement in crime, and this change is strongly related to variation in local life circumstances. Our use of a hierarchical linear model allowed us to rule out criminal propensity as a confounding variable by controlling for individual differences in the overall probability of offending. Thus, our results cannot be explained by the possibility that drug use, unstable marriage, and criminal offending are all indicators of an underlying stable trait—a lack of self-control, for example. Rather, we found that, regardless of overall level of offending,

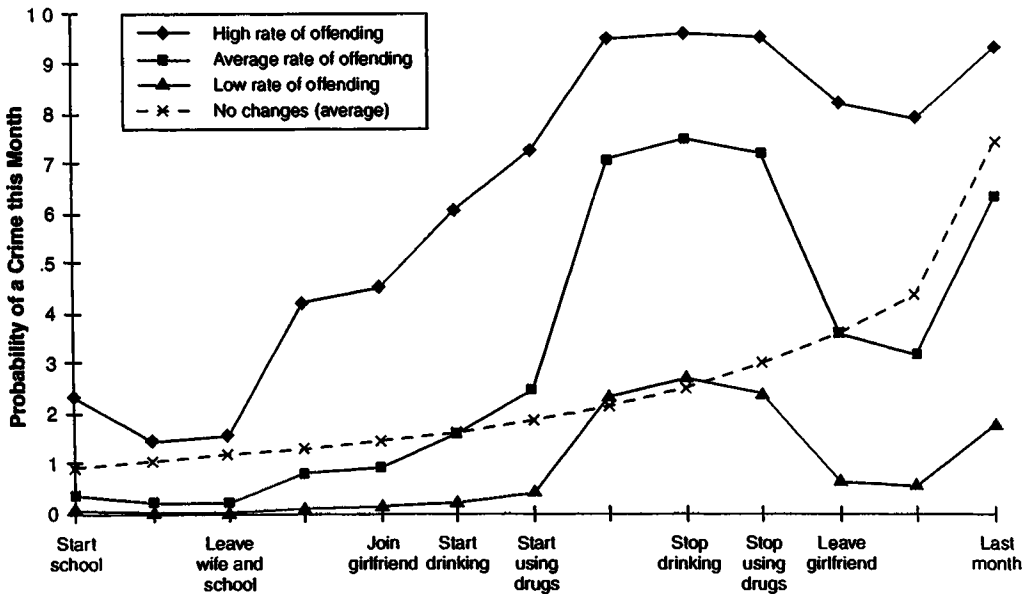

Figure 1. The Effect of Changing Life Circumstances on the Probability of Committing a Crime: Three Hypothetical Individuals

these men were more likely to commit crimes when using illegal drugs and conversely were less likely to commit crimes when living with a wife.

Figure 1 illustrates the implications of the estimates in Table 4. This figure shows that, even in the presence of substantial individual differences in the propensity to offend, varying local life circumstances produce dramatic changes in rates of offending. Probabilities of committing a crime by three hypothetical individuals who offend at average, low, and high rates (corresponding to monthly probabilities of .33, .06, and .80 when all X variables are at their means) are portrayed. They begin this period living with wives and not using drugs or using alcohol heavily The horizontal axis indicates changes that occur from one month to the next, and the lines plot the corresponding changes in rates of offending. For comparison, a fourth line indicates the overall time trend when local life circumstances are held constant Although changes in life circumstances have greater effects for the average- and high-rate offenders, offense rates for all three hypothetical individuals vary markedly with changes in living arrangements, school attendance, and substance use

We believe that measuring offending activity in fairly short units of time is important for understanding the relationship between life events and criminal behavior. As Freedman et al. (1988) noted, "the traditional panel study provides only multiple snapshots of individual lives" (p. 39). When one- or two-year intervals are used, the correspondence between events in time may be missed, especially in the unstable lives of serious offenders To detect change over brief time spans, it is also important to use self-reports of criminal activity. Although official records may be good indicators of the overall level of criminal activity, measures of arrests or convictions have base rates that are too low to allow meaningful estimation of the relationship of offending to local life circumstances.

We used life-event calendars to collect retrospective data in one-month units Although studies on the reliability of such techniques (Freedman et al. 1988; Caspi and Amell 1994) have been encouraging, Freedman et al (1988) reported that "one important issue in obtaining retrospective data appears to be the degree of volatility of the activity patterns, since respondents find it more difficult to recall widely fluctuating event

patterns" (p. 66). Because we studied a population with considerable volatility in their activity patterns, it would be extremely beneficial to replicate this study with a longitudinal design that allows the prospective collection of data at short intervals.

The measurement of offending and life circumstances at frequent intervals over a relatively short period of time provides a different perspective on change than that provided by Sampson and Laub (1990, 1993; Laub and Sampson 1993). Whereas their long-term perspective showed that life events could modify criminal career trajectories, our short-term perspective has shown that local life circumstances can change criminal careers by modifying the likelihood of offending *at particular times*.

Because we looked at only a tiny portion of the life course, we cannot say whether the changes we observed represent alterations in life trajectories for some individuals, nor can we assess the degree of continuity in these respondents' criminal careers. We are encouraged, however, that the underlying processes involved in producing short-term change may be the same processes that produce "deep" change, or the alteration in a life trajectory. Living with a wife reduces the short-term likelihood of committing crime; a stable marriage and attachment to a spouse may lead to the long-term cessation of offending.

We have made no attempt to explain the processes underlying change. As we noted in our introduction, social control and rational choice (or opportunity) theories provide the most relevant sociological perspectives. Sampson and Laub (1993) emphasized the role of "*informal* social controls that emerge from the role reciprocities and structure of interpersonal bonds linking members of society to one another and to wider social institutions such as work, family, and school" (p. 18) and contended that "adult social ties are important insofar as they create interdependent systems of obligation and restraint that impose significant costs for translating criminal propensities into action" (p. 141). Their focus on the quality or strength of these social ties goes beyond what we could assess with our simple indicators. Their results suggest that we might have found stronger relationships between offending and local life circumstances if we had been able to appreciate more fully the level of investment those circumstances represented for individuals.

Rational choice or routine activity perspectives may also provide useful frameworks for thinking about the role of local life circumstances. When individuals are married and living with their spouses, their perceptions of the consequences of crime may change, either because they view themselves as having more to lose, or because a sense of shame is enhanced when the reactions of a significant other person are considered. When individuals are using drugs, on the other hand, they may become even more present-oriented, judge the utility of committing a crime to be greater, and give lesser consideration to sanctions and shame. Involvement in marriage and family, school, and work may also be important because of the role these institutions play in structuring daily activities. Time devoted to activities related to those institutions is time unavailable for "hanging out" on the streets or in bars and may therefore reduce an individual's exposure to situations conducive to involvement in criminal behavior.

Reconciling Continuity and Change

We cannot assume that the local life circumstances we studied were randomly distributed among offenders. Probably, they were to some extent determined by time-stable characteristics of the individuals. Our results in no way negate findings of long-term continuity—individuals do differ in their long-term criminal propensities and in their abilities to maintain stable schooling, employment, and marriages.

We believe that these tendencies interact with each other in complex ways and that contrasting continuity with change is a false dichotomy. As Rowe and Osgood (1984) noted, long-term correlates of offending, even genetic factors, do not rule out important social influences on crime because social processes may be essential links in the chain of causes that produce those relationships. For example, Booth and Osgood (1993) found that the positive relationship of testosterone levels to adult offending was mediated by current social integration. Thus,

although continuity over the life course supports the importance of early influences, it has no direct bearing on the contribution of social factors during adulthood.

One view of the interplay between continuity and change can be found in the recent work of Nagin and Paternoster (1993), who showed how theories of criminal opportunity and rational choice can be linked to theories that focus on enduring individual differences in propensities. Using scenarios presented to college undergraduates, they found that a measure of self-control was directly related to decisions to commit offenses and indirectly related to intentions to offend through self-control's influence on judgments about total sanctions, the perceived utility of committing the offense, and shame. Yet even after differences in self-control were accounted for, decisions to offend were still influenced by the attractiveness of the target, the ease of committing the crime, and perceptions of the costs and benefits of committing the crime. As Nagin and Paternoster (1993) noted, "a belief that variation in offending is reflective of variations in criminal propensity or poor self-control does not preclude the possibility that would-be offenders are sensitive to the attractions and deterrents of crime" (p. 490).

Gottfredson and Hirschi (1990), while arguing for the central role of a time-stable criminal propensity, acknowledged a role for immediate circumstances in determining when and where crimes are committed. They have reconciled the seeming contradiction by distinguishing between self-control—"relatively stable differences across individuals in the propensity to commit criminal (or equivalent) acts" (p. 137)—and the criminal acts themselves—"short-term, circumscribed events that presuppose a peculiar set of necessary conditions (e.g., activity, opportunity, adversaries, victims, goods)" (p. 137). Yet Gottfredson and Hirschi (1990) denied a role for life circumstances beyond the immediate situation, such as those we have studied, by arguing that these ordinary events are caused by the individual's crime-relevant characteristics and thus are only spuriously connected to crime.

We have shown that less immediate local life circumstances are also important. These circumstances may provide an essential intermediate level of analysis that can be linked both to enduring individual differences rooted in early childhood experience and to the immediate circumstances in which criminal acts occur. Our results closely parallel those of Nagin and Paternoster (1993). They showed that, although individuals with low self-control discounted the costs of crime relative to individuals with high self-control, they were not insensitive to costs. We have shown that, although individuals with a high propensity to offend maintain few social bonds to society relative to individuals with a low propensity, they are not insensitive to those bonds. Persons with a high propensity for crime may be unlikely to graduate from school, unlikely to maintain meaningful employment, and unlikely to stay in stable, committed marriages. Even so, they may *sometimes* go to school, *sometimes* work, and *sometimes* live with a wife, and *at those times* they are less likely to commit crimes. Likewise the high-propensity individuals may be more likely than others to be involved with drugs and heavy alcohol use, but *sometimes* they do not use these substances, and *when they do not*, they are less likely to commit crimes.

We believe our findings also provide a link to the long-term change described by Sampson and Laub (1993). The combined effects of several crime-inhibiting local life circumstances may lead to the accumulation of enough social capital to motivate an individual to work at maintaining the social bonds. The maintenance of the bonds may, in turn, provide additional social capital and further reduce offending. If such a process continues to spiral, it could produce the kind of incremental change that results in a major alteration of a life trajectory. Just as lives are built one day at a time, over-arching life-span trajectories can only evolve from responses to daily social realities. Inevitably, short-term and long-term analyses of change must converge. Achieving this convergence would lend considerable support to our theories, and the effort will provide a richer appreciation of the task of explaining how individual lives evolve.

In sum, our findings strongly support the conclusion that continuity and change are not opposites, but rather are two faces of intertwined causal processes. Our results forcefully demonstrate that social events during

adulthood are related to crime. Contrary to the image presented by some theorists of crime, life after puberty does matter. Yet changes in offending during adulthood do not negate the importance of enduring individual differences in criminal propensity or of related constructs like self-control. Instead, our results suggest that differences among individuals combine with their shifting social environments to produce current levels of criminal activity.

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[Footnotes]

Models for Longitudinal Data: A Generalized Estimating Equation Approach

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Article

An Exploration of Protective Factors Supporting Desistance From Sexual Offending

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Abstract

This article considers factors that support or assist desistance from sexual offending in those who have previously offended. Current risk assessment tools for sexual offending focus almost exclusively on assessing factors that raise the risk for offending. The aim of this study was to review the available literature on protective factors supporting desistance from sexual offending. This article discusses the potential value of incorporating protective factors into the assessment process, and examines the literature on this topic to propose a list of eight potential protective domains for sexual offending. The inclusion of notions of desistance and strengths may provide additional guidance to the assessment and treatment of those who sexually offend. Further research investigations are recommended to consolidate the preliminary conclusions from this study regarding the nature and influence of protective factors in enabling individuals to desist from further offending.

Keywords

risk assessment, sexual offender, recidivism, desistance, protective factors

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Introduction

Modern-day risk assessment schemes tend to predict recidivism better than chance, but there is room for improvement. The major "third generation" assessment frameworks for assessing convicted sexual offenders focus almost exclusively on factors that raise risk for recidivism, for example, the *STABLE-2007* (Fernandez, Harris, Hanson, & Sparks, 2012), the *Structure Risk Assessment* (Thornton, 2002), the *Violence Risk Scale–Sexual Offender version* (VRS:SO; Wong, Olver, Nicholaichuk, & Gordon, 2003), the *Sexual Violence Risk–20* (SVR-20; Boer, Hart, Kropp, & Webster, 1997), and the *Risk for Sexual Violence Protocol* (RSVP; Hart et al., 2003). Consequently, Maruna and LeBel (2003) described the assessment of risks and needs as "deficit focused" and urged those in the criminal justice field to consider balancing such measurement with an assessment of individual strengths.

There are three reasons in particular why it may be important to consider strengths as well as risks in the assessment process. First, to do so could improve the predictive validity of our risk assessment tools. For instance, the combined use of risk factors and protective factors has demonstrated incremental predictive validity over assessments with risk factors alone. A study on a combined violent and sexual offender sample that had been discharged from inpatient forensic psychiatric treatment, showed a significant increase in predictive validity for violent recidivism after treatment when protective factors were added to the risk factors in the assessment (de Vries Robbé, de Vogel, & Douglas, 2013). Second, a one-sided focus on risk can lead to over-prediction of violence risk, and poor risk management and treatment planning. Rogers (2000) argued that risk-only evaluations are inherently inaccurate and implicitly biased, often resulting in negative consequences to forensic populations. In particular, over-prediction (i.e., too many false positives) can lead to pessimism among therapists and unnecessarily long treatment or overly restrictive risk management, which are costly for both society, in terms of financial burden, and for the individual in terms of limited liberties (Miller, 2006). Third, deficit-focused assessments can be stigmatizing for criminal justice clients. In particular, research by Attrill and Liell (2007) among prisoners and ex-prisoners emphasized the feelings of unfairness of the assessors' focus on risk to the exclusion of any recognition for positive accomplishments. For example, one prisoner in their study reported his view that, "From my experience risk assessment isn't fair as it's just pure negatives that people look at, not positives." Such testimony raises the possibility that the emphasis on risks found in most current assessment processes will have a negative impact on the relationship between the assessor and the assessee, and consequently perhaps on the rehabilitation process itself.

These risky aspects of risk assessment may be offset by paying more than lip service to the concept of *protective factors* in assessment work. By this term, we mean factors that enable or assist desistance from (sexual) offending among those that have already offended. In the criminology field, some work has focused on the assessment of protective factors (e.g., Herrenkohl et al., 2003) or individual *strengths* as a way of complementing the deficit-driven focus on risks and needs (e.g., Maruna & LeBel, 2003). Others have sought to subtly shift the focus away from assessing predictors of

recidivism to those factors associated with successful desistance from crime (e.g., Farrall, 2004, McNeill, 2006; Robinson & Shapland, 2008).

Before protective factors can be fully incorporated into sexual offending assessment frameworks, however, we need to (a) identify potential protective factors from exploratory research and the theoretical literature, (b) build theoretical models to explain how the identified protective factors reduce risk, (c) articulate and systematically collect data on these variables and examine their relationship with recidivism, and (d) build and validate tools for the assessment of protective factors for sexual violence. The present article seeks to complete the first of these steps, that is, examine the existing literature to identify and propose potential protective factors for sexual offending.

Conceptualizing Protective Factors

A starting point in seeking to define protective factors for sexual offending might be to mirror accepted definitions of risk factors (e.g., Andrews & Bonta, 2006) by stating that a protective factor is *a feature of a person that lowers the risk of reoffending* In addition to internal, psychological features, there is a question about whether or not external, environmental, or circumstantial features of an individual's life situation could also be considered to be protective factors. Certainly, criminological research into desistance indicates that an ex-offender's social situation is an important factor associated with desistance. In fact, some desistance researchers would argue that external factors are more important than internal ones (for a discussion, see LeBel, Burnett, Maruna, & Bushway, 2008). This is in line with results from a protective factors study by Ullrich and Coid (2011) in a sample of violent and sexual offenders, which found that protection was primarily related to social network factors. In the case of sexual offending in particular, restrictive external circumstances are frequently imposed on the individual against his preference, such as incarceration, residency restrictions, social isolation, and restricted employment opportunities. If these external circumstances are guided by empirical evidence, they can be an important part of risk management processes to create more protective environments. Therefore, we believe that the definition of a protective factor should encompass social, interpersonal, and environmental factors as well as psychological and behavioral features.

In pursuit of an approach to risk reduction based on building protective resources, we could profitably further differentiate between static/unchangeable protective factors (e.g., secure attachment in childhood) and those that are behavioral or otherwise potentially changeable. In line with a recent theory of risk factors (Mann, Hanson, & Thornton, 2010), we also suggest that it is helpful to distinguish between the protective factor as an *underlying propensity* (psychological or personality characteristic) and observable *manifestations* of that propensity. For example, holding down a job may be a manifestation of several underlying propensities (e.g., work ethic, plus self-discipline, plus ability to manage social relationships), which together enable stable employment, along with external factors (e.g., economy, employment discrimination).

In another example, the underlying propensities of good social skills may be manifest in generally well-functioning intimate relationships.

Some researchers (e g , Farrington, 2003) have divided the factors associated with positive desistance outcomes into two categories depending on whether the positive factor has a direct influence on desistance irrespective of risk level (termed *promotive factor*) or whether the positive factor moderates the impact of risk factors (i e , has greater risk-reducing effects for those people deemed to be at high-risk of offending than for those deemed to be low-risk—the more precise use of the term *protective factor* or *resilience*) Ullrich and Coid (2011) did not find indications that protective factors have different effects at different levels of risk, whereas Lodewijks, de Ruiter, and Doreleijers (2010) found proof for a buffering or mitigating effect of protective factors on risk factors in adolescent samples. As we are equally concerned with both types of positive factors, and as the sexual offending protective factor literature is still in its infancy, these distinctions are probably too fine for the current state of knowledge, and so we use the term *protective factors* here as a general term to refer to both types.

To develop the definition further, we propose that protective factors must exist as definable propensities or manifestations thereof in their own right, rather than being no more than the absence of a risk factor Accordingly, it should be possible to define individual protective factors without the use of negatives. To illustrate, "capacity for intimacy" would meet this condition, but "lack of hostility" would not. Put another way, some protective factors are likely to be the opposite of risk factors, a proposal that we explore in more detail below, but in this argument we draw a clear distinction between the *opposite* of a risk factor and the *absence* of a risk factor

In addition, protective factors and risk factors can conceivably co-occur in the same domain That is, even protective factors that are the opposite, or "healthy pole," of risk factors are not necessarily mutually exclusive entities from the risk factor An example in which protective and risk factors can co-occur is in the domain of social influences. Negative social influences are generally considered a risk factor, at the same time positive social influences are considered a protective factor However, it is quite possible for individuals to have both negative and positive social influences in their lives, that is, for strengths and risk factors to co-exist even though they seem like opposites For example, a person could both belong to a drug-using social group and, separately, attend university classes with students learning engineering A single measure of social influences "positive or negative?" would not capture this common complexity A risk assessment tool that poses strengths as the opposites of vulnerabilities, yet measures both ends of risk domains simultaneously is the *Short-Term Assessment of Risk and Treatability* (START, Webster, Martin, Brink, Nicholls, & Middleton, 2004). However, despite good results for predicting non-violence with the strengths scale, no incremental predictive validity over vulnerabilities has yet been reported (e g., Braithwaite, Charette, Crocker, & Reyes, 2010; Chu, Thomas, Ogloff, & Daffern, 2011, Viljoen, Nicholls, Greaves, de Ruiter, & Brink, 2011). Another risk assessment tool that incorporates protective strengths in addition to risk factors is the *Inventory of Offender Risk, Needs, and Strengths* (IORNS, Miller, 2006), which is a self-report measure to determine risks, needs, and protective factors for all types of offenders In a sample of

American pre-release prisoners, the IORNS subscales Protective Strength Index and the Personal Resources Scale were able to differentiate between successful and unsuccessful reintegration (Miller, 2006) As far as we know, to date, no sexual offender predictive validity studies have been carried out with either of these tools

Recently, two promising SVR assessment tools have been developed that include protective factors for juvenile sexual offending Print and colleagues (2009) developed a tool designed to guide the assessment of young people (aged 12-18) who are known to have sexually abused others the AIM-2 (Print et al., 2009) The tool includes 24 protective factors (termed *strengths* or *resiliencies*) as well as 51 risk factors, grouped into four domains developmental issues, family issues, current environment, and offence-specific issues An initial validation study suggested that a high score on the strengths scale acted as a protective factor even for juvenile sexual offenders with a high score on the concerns scale (Griffin, Beech, Print, Bradshaw, & Quayle, 2008) Intending to contribute to a more comprehensive assessment for adolescent sexual recidivism, Worling (2013) developed a new tool specifically to assess protective factors for juvenile sexual offending *Desistence for Adolescents Who Sexually Harm* (DASH-13) The tool consists of a checklist of 13 factors 7 related specifically to future sexual health and 6 concerning more general, pro-social functioning Investigation of the psychometric properties of the tool is currently in process

Finally, protective factors can be the result of social development factors (families, peers, communities) as well as from biological and psychological maturation As with risk factors (see Ward & Beech, 2006), there may well be neural mechanisms associated with protective factors, possibly originating from pre-natal or peri-natal conditions or early childhood experiences Such mechanisms need to be uncovered and understood, to assist treatment providers' efforts to strengthen an individual's protective factors, or provide him or her with *prosthetics* to compensate for under-developed or "missing" protective factors Although the medical analogy is far from ideal, we use the term *prosthetics* here to refer to "artificial" (or coached) protective factors that effectively compensate for the absence of "organically" occurring protective factors Examples would be structured problem-solving skills or learned ways of expressing feelings assertively Psychiatric medications (e.g , selective serotonine reuptake inhibitors (SSRIs) or anti-libidinal medications) could be considered to be prosthetic protective factors if they have the effect of reducing the intensity of sexual drive or enhancing sexual self-control

Identifying Protective Factors for Sexual Offending

Mirroring the accepted definition of a risk factor for sexual offending, a protective factor should be empirically related to desistance from sexual offending. A stringent standard, equivalent to the standard set for a risk factor (see Mann et al , 2010), would require at least three separate studies, when meta-analytically integrated, to demonstrate that the presence of the protective factor was associated with lower reconviction rates However, as the literature into protective factors for sexual offending is in its infancy with few empirical studies yet reported, there is a minimal evidence base to consider (see also Laws & Ward, 2011)

Moreover, there may be additional ways of identifying protective factors besides reconviction studies After all, desistance research starts from a different point than treatment research by putting the individual (not the program) at the center of the change process Rather than asking "what works" and comparing the reconviction rates of treatment and control groups, desistance studies ask how change works and seek to identify those factors that support the individual in his or her efforts to maintain desistance (for reviews, see Farrall & Calverley, 2005, Laub & Sampson, 2001) Therefore, in this article, we also draw on qualitative and quantitative desistance studies to identify *potential* protective factors in sexual offending. The hope is that future evaluation research might empirically test the protective factors proposed in this article and complement the understanding of desistance from sexual offending. In addition, it would be valuable if sexual offending research were to differentiate between protective factors associated with desistance from general or violent offending and protective factors associated specifically with desistance from sexual offending, as these may not necessarily be the same factors

We will consider a variety of sources of ideas about what psychological propensities or sociological circumstances might aid desistance from sexual offending. Our exploration of potential protective factors concentrates on three areas (a) the sex offending risk factor literature, to consider when the opposing/healthy end of a risk domain could be considered protective; (b) the desistance literature in criminology specifically on sexual violence, and (c) the content of an existing measure of protective factors intended to be applicable for violent as well as sexual offending assessment. The aim is to integrate the findings from these diverse sources to create a list of potential protective factors for sexual offending.

Protective Factors as the Opposite of Risk Factors for Sexual Offending

As already discussed, it seems likely that often protective factors and risk factors would be two sides of the same coin That is, the unhealthy pole of a continuum represents a risk factor (e g., offence-supportive beliefs), whereas the healthy pole represents a protective factor (e g , in this example, beliefs supportive of respectful and age-appropriate sexual relationships). As proposed earlier, protective factors must exist as definable propensities rather than being no more than the absence of a risk factor However, in some cases, risk factors are actually formulated as the absence of a healthy propensity or skill (e g., "poor problem-solving skills"), so the presence of the healthy propensity (in this example, "good problem-solving skills") could be considered a protective factor

Table 1 shows the risk factors for sexual offending that have the strongest empirical support (see Mann et al., 2010, for an account of the evidence base for these factors) For each of these factors, a description is given of the suggested corresponding positive pole, that is, the healthy propensities of these risk factors (see Table 1). The healthy poles of the 14 factors identified as most valid for sexual offending are proposed to be *Moderate intensity sexual drive, Sexual preference for consenting adults, Attitudes supportive of respectful and age-appropriate sexual relationships, Preference for*

Table 1. Established and Promising Risk Factors for Sexual Offending and Their Corresponding Healthy Poles

Risk factor	Corresponding healthy pole
Sexual preoccupation	Moderate intensity sexual drive A preference for having sex with someone you are emotionally attached to and who is attached to you Romantic or emotionally intimate connection is seen as being as desirable as sexual gratification
Deviant sexual interest	Sexual preference for consenting adults A preference for sex with consenting sexual partners of adult age Desire for potentially reciprocal sexual activities in which the adult partner is more likely than not to also be interested in the activity
Offence-supportive attitudes	Attitudes supportive of respectful and age-appropriate sexual relationships Weighs the rights of others equally with own wants and desires Recognizes the right to refuse sexual activity and opposes sexual abuse. Recognizes the nature of childhood and the implications of emotional & physical immaturity for likely harm that would be caused by early sexual activity
Emotional congruence with children	Preference for emotional intimacy with adults Recognizes the nature of childhood developmental stages and the more limited capacity of children in relation to adult-oriented constructs such as reciprocal emotional intimacy
Lack of emotionally intimate relationships with adults	Capacity for lasting emotionally intimate relationships with adults Has one or more emotional confidantes, has lasting intimate relationships including sexual relationships, can maintain a stable relationship for longer period of time; relationships are characterized by mutual disclosure of vulnerability and acceptance of each other's faults. Sustained emotionally intimate marital type relationships; emotionally intimate friendships, cooperative and discriminating approach to casual social/work contacts.
Lifestyle impulsiveness (poor self-regulation, impulsive and reckless, unstable work patterns)	Self-control Able to set and achieve medium and long-term goals through effortful goal-directed actions Considers consequences before taking decisions, and weighs consequences to others at least as highly as consequences to self Values pro-social solutions and seeks to achieve peaceful resolutions of difference rather than aggressive resolutions Regulating immediate impulses, stress reactions, and general lifestyle.
Poor cognitive problem solving	Effective problem-solving skills Able to articulate different solutions to a problem, including pro-social solutions, and choose between solutions by considering the consequences, to self and others, of each option Weights long-term gain over short-term gain
Resistance to rules and supervision	Acceptance of rules and supervision Capacity to connect with people in authority Meaningful relationships with supervising or treating professionals. Able to accept rules and regulations and keep to agreements with treatment staff, employers, probation officers and other professionals. Manages to obey imposed legal conditions.
Grievance/hostility	Trustful and forgiving orientation An orientation to others that is typically trustful and peaceful, seeing the others' point of view/perspective, preferring peaceful solutions to interpersonal conflict and generally able to offer forgiveness after being wronged
Negative social influences	Law-abiding social network Social network primarily or entirely composed of stable, law-abiding individuals who promote pro-social activity and who offer support and strengthen self-control

(continued)

Table 1. (continued)

Risk factor	Corresponding healthy pole
Hostility toward women	Positive attitudes toward women Generally pro-social, trusting and respectful attitudes toward women Views women as equal to men Believes women have good intentions.
Machiavellianism	Honest and respectful attitudes Views others as equal Recognizes others' abilities and strengths. Values honesty and does not take advantage of others
Lack of concern for others/ callousness	Care and concern for others Shows interest in others. Cares about other people's feelings and well-being Attempts to help others when in need Does not act on own needs before considering those of others
Dysfunctional coping	Functional coping Dealing with negative emotions (like anger, anxiety, or rejection) through appropriate, socially acceptable strategies. Managing stress in a calm, non-sexual, and effective manner

emotional intimacy with adults, Capacity for lasting emotionally intimate relationships with adults, Self-control, Effective problem solving skills, Acceptance of rules and supervision, Trustful and forgiving orientation, Law-abiding social network, Positive attitudes toward women, Honest and respectful attitudes, Care and concern for others, and *Functional coping* Given the strong empirical base for the risk poles of these sexual offending factors, it is hypothesized that their healthy poles are equally strong related to reductions in sexually violent recidivism.

Protective Factors in the Desistance Literature

"Desistance from crime" has become a dominant area of research activity within criminology over the last 20 years (see Farrall & Calverley, 2005). The concept of desistance relates to the process of abstaining from crime after repeated or habitual engagement in criminal activities (Maruna, 2001) Desistance processes often involve key turning points or disorienting life episodes (Laub & Sampson, 2001), but desistance is not a single moment or event in a person's life Instead, desistance is widely understood as a long-term maintenance process involving a slow recognition of the need to change, motivational fluctuation, and possible false starts followed by lapses or relapses By changing the focus of inquiry from investigating why some ex-prisoners "fail" (or re-offend) and instead trying to understand how and why some individuals succeed or "go straight," desistance research has opened up new understandings in criminology with distinct implications for assessment and treatment practice.

General desistance factors The factors identified by the criminological literature for desistance from general criminal offending may also be relevant to sexual offending (Laws & Ward, 2011) For example, aging, stable employment, marriage, sobriety, lack of stress, and good mental health have all been found to have a protective effect

on criminal behavior (Laub & Sampson, 2001) Moreover, research with ex-prisoners suggests that long-term, persistent offenders tend to lack a sense of hope or feelings of agency (Maruna, 2001, Zamble & Quinsey, 1997) However, reformed ex-prisoners are characterized by hope and optimism They seem to maintain an overly optimistic sense of control over their future and strong internal beliefs about their own self-worth and personal destinies (Burnett & Maruna, 2006, LeBel et al , 2008; Maruna, 2001) Desisters also seem to embrace change-enhancing cognitive patterns consistent patterns of cognition that encompass the ability to evaluate one's behavior and learn from one's mistakes (Maruna, 2001) Arguably, one potential indicator of this willingness to change is the individual's persistence with a course of intervention to change risk-relevant behavior In addition, desisters seem to possess a sense of achievement and accomplishment (see Maruna & LeBel, 2003) Making meaningful contributions to one's community or family can lead to grounded increments in self-esteem, feelings of meaningful purposiveness, and a cognitive restructuring toward responsibility for young people in trouble with the law (Toch, 2000) Such successful achievements can predict successful desistance (LeBel et al , 2008) or abstinence from crime (Uggen & Janikula, 1999) Last, the desistance literature has established the importance of moving away from groups of delinquent peers (Warr, 1998) and establishing meaningful intimate relationships (Laub & Sampson, 2001) The latter also being the opposite pole of "lack of emotional intimacy with others," which is a strongly evidenced risk factor for sexual offending (Mann et al , 2010)

Sex offending desistance factors. To date studies of desistance from sexual crimes are few (see Laws & Ward, 2011). Farmer, Beech, and Ward (2012) studied the self-narratives of individuals convicted of child molestation who had apparently desisted from offending, comparing them with individuals who were thought to be still actively seeking opportunities to offend. Several factors differentiated the desistance group from the active group The desisters appeared to have an *enhanced sense of personal agency*, had a *stronger internal locus of control*, were consistently more able to *find positive outcomes from negative events*, identified *treatment as* having provided them with a *turning point*, and, most strikingly, seemed to have found a *place within a social group or network* They described belonging to three particular types of social groups or communities family, friends, and church In contrast, the "active" or at-risk group all described themselves as socially alienated or isolated from others (Farmer et al , 2012)

Measure of Protective Factors

In this section, we review a structured assessment tool developed specifically for the assessment of protective factors for adult violent as well as sexual offending the *Structured Assessment of Protective Factors for violence risk* (SAPROF, de Vogel, de Ruiter, Bouman, & de Vries Robbé, 2009, 2012). The SAPROF was designed to assess general protective factors for recidivism in adults convicted of any violent crime (including sexual) The tool aims to form a positive supplement to risk focused

structured professional judgment (SPJ) tools like the *Historical Clinical Risk Management-20* (HCR-20 Version 2, Webster, Douglas, Eaves, & Hart, 1997), its revision the HCR-20 Version 3 (HCR-20^{V3}, Douglas, Hart, Webster, & Belfrage, 2013), or related SPJ risk tools However, it can also be used in addition to actuarial risk tools such as the STABLE-2007 The SAPROF contains 17 protective factors, which are mostly dynamic in nature and divided into three scales. internal factors, motivational factors, and external factors (similarly to psychological, behavioral, and environmental features) Each factor is provided with a rationale describing its empirical background, which largely relies on general violent crime research and to a lesser extent incorporates research on sexual offending After completing the scale, the assessor has the option to mark factors as critical for the overall protection or for treatment planning ("keys" and "goals") and makes a "final protection judgment " The results from the assessment are intended to be integrated with results from a risk tool to come to an overall final judgment on the level of risk, which incorporates both the present risk—and protective factors

Previous results with forensic psychiatric patients convicted of violent offending showed good predictive validities for the SAPROF for violent incidents toward others and self-harm during treatment (Abidin et al , 2013) as well as for violent recidivism after discharge from treatment (de Vries Robbé, de Vogel, & de Spa, 2011). Moreover, incremental predictive value of assessing the SAPROF protective factors in addition to the HCR-20 risk factors was demonstrated (de Vries Robbé et al , 2013) The first empirical SAPROF study that concentrated solely on patients convicted of sexual offending was recently carried out (de Vries Robbé, de Vogel, Koster, & Bogaerts, 2015) In this study, the predictive validity of the protective factors in the SAPROF for non-recidivism among 83 discharged treated sexual offenders was analyzed The total score of the 17 protective factors was significantly predictive of no new convictions for any (including sexual) violence for short-term as well as long-term (15-year) follow-up as was the final protection judgment When only sexually violent recidivism was used as outcome measure, the SAPROF total score was also a significant predictor at different follow-up times The protective factors remained significantly predictive of general violent re-offending and sexually violent re-offending when controlling for ratings on the HCR-20 and SVR-20 risk factors Prospective clinical studies into the predictive validity of the protective factors in the SAPROF for no violent incidents toward others during treatment of forensic psychiatric patients (follow-up 12 months) also showed good results for those patients convicted of sexual offending (de Vries Robbé, de Vogel, Wever, Douglas, & Nijman, 2014) Although these results are promising, the research samples are still small and replication of these findings is essential Additional studies into the predictive validity of the SAPROF for different categories of sexual crime types will also need to be conducted in the near future.

Proposed Protective Factors for Sexual Offending

We propose that the various literatures discussed in the preceding review can be summarized into eight "protective domains" that could be hypothesized to assist desistance

from sexual offending Table 2 provides an overview of the protective factors derived from the preceding review and their relationship to the proposed protective domains The factors are categorized by source (a) the healthy poles of SVR domains, (b) desistance factors for sexual offending, and (c) protective factors from the general risk assessment tool for violent and sexual offending (general protective factors)

Healthy Sexual Interests

This domain refers to a propensity to prefer sexual relationships with consenting adults co-existing with a moderate intensity sexual drive Individuals with protective factors in this domain are likely to show a balance between a desire for sexual fulfillment and a desire for other types of fulfillment They will have adequate sexual knowledge and beliefs that support age-appropriate and consenting relationships. This domain is construed as the healthy poles of two, well-established sexual offending risk factors *Sexual preference for consenting adults* and *Moderate intensity sexual drive* Additional evidence for healthy sexual interests may be found in the presence of *Attitudes supportive of respectful and age-appropriate sexual relationships* (the healthy pole of the risk factor Offence-supportive attitudes) The protective factor *Medication* could have a protective effect on sexual drive

Capacity for Emotional Intimacy

This domain refers to a propensity to form and maintain emotionally close and satisfying relationships with other adults Individuals with protective factors in this domain will most likely have a *Trustful and forgiving orientation to others* (healthy pole for the risk factor Grievance/hostile attitude to others), a *Preference for emotional intimacy with adults* rather than children (healthy pole for the risk factor Emotional congruence with children), and the ability to communicate effectively The most obvious manifestation of this propensity is that the individual has, or has had, long-lasting and emotionally stable intimate relationships with adult partners (e g , the risk factor healthy pole *Capacity for lasting emotionally intimate relationships with adults*). The healthy poles *Positive attitudes toward women, Honest and respectful attitudes*, and *Care and concern for others* all reflect underlying personality traits which enhance capacity for emotional intimacy. This domain is also reflected in different general protective factors. *Intimate relationship, Secure attachment in childhood*, and *Empathy.*

Constructive Social and Professional Support Network

This protective domain refers to the capability of forming constructive relationships with other adults, both socially and with persons in professional support and authority roles Individuals with protective factors in this domain will have a law-abiding social network This is represented in the sexual offending desistance factor *Place within a social group or network* and in the risk factor healthy pole *Law-abiding social network*

Table 2. Proposed Protective Domains and Evidence

Proposed protective domains	Evidence		
	Healthy poles of risk factors	Desistance factors	General protective factors
1 Healthy sexual interests	Moderate intensity sexual drive		Medication
	Sexual preference for consenting adults		
	Attitudes supportive of respectful and age-appropriate sexual relationships		
2. Capacity for emotional intimacy	Preference for emotional intimacy with adults		Empathy
	Capacity for lasting emotionally intimate relationships with adults		Secure attachment in childhood
	Trustful and forgiving orientation		Intimate relationship
	Positive attitudes toward women		
	Honest and respectful attitudes		
	Care and concern for others		
3 Constructive social and professional support network	Acceptance of rules and supervision	Treatment as turning point	Motivation for treatment
	Law-abiding social network	Place within a social group or network	Attitudes toward authority
	Honest and respectful attitudes		Professional care
	Empathy		Living circumstances
			Network
4 Goal-directed living	Self-control	Enhanced sense of personal agency	Self-control
		Stronger internal locus of control	Financial management
			Life goals
5 Good problem solving	Effective problem-solving skills		Intelligence
	Functional coping		Coping
6. Engaged in employment or constructive leisure activities		Place within a social group or network	Work
			Leisure activities
7 Sobriety	Self-control		Self-control
			Professional care
			External control
8. Hopeful, optimistic and motivated attitude to desistance		Find positive outcomes from negative events	Motivation for treatment
		Treatment as turning point	Medication

Additional support is provided by the general protective factor *Network* Individuals with protective factors in this domain may also have meaningful relationships with professionals, reflected by sexual offending desistance factor *Treatment as turning point* and demonstrated in general protective factors *Motivation for treatment, Professional care*, and *Living circumstances*. Furthermore, they may have a positive attitude to authority, risk factor healthy pole *Acceptance of rules and supervision* and general protective factor *Attitudes toward authority* The risk factors healthy poles *Honest and respectful attitudes* and *Care and concern for others* provide underlying traits which facilitate the development of a constructive social and professional support network.

Goal-Directed Living

This protective domain refers to the capacity to set goals and direct daily activities so that progress can be made toward those goals (general protective factor *Life goals*) Individuals with protective factors in this domain will show effortful, positive, goal-directed behaviors (the risk factor healthy pole *Self-control*), will have *Enhanced sense of personal agency* and *Stronger internal locus of control* (both desistance factors), and will show good self-discipline (reflected in general protective factors *Self-control* and *Financial management*)

Good Problem Solving

This protective domain refers to the capacity to manage life's daily problems without becoming overwhelmed or resorting to anti-social or avoidance techniques to regain control Such a propensity is reflected by the risk factor healthy poles *Functional coping* and *Effective problem-solving skills* and general protective factor *Coping* Protective factor *Intelligence* may reflect underlying abilities for good problem solving

Engaged in Employment or Constructive Leisure Activities

This protective domain refers to the propensity to live a life that involves constructive and rewarding activity and ideally also a sense of intrinsic satisfaction and accomplishment Employment is the most obvious protective factor, reflected by general protective factor *Work* Equal results could be obtained from engaging in personally meaningful leisure or social activities such as sports, social hobbies, or caring for others (reflected in general protective factor *Leisure activities* and sexual offending desistance factor *Place within a social group or network*)

Sobriety

This protective domain refers to the abstention from drug or alcohol misuse It is an established protective factor in the literature with *Self-control* as a risk factor healthy

pole (and general protective factor), indicating the likelihood of sobriety intentions to succeed External motivation through general protective factors *Professional care* and *External control* may provide assistance with sobriety

Hopeful, Optimistic and Motivated Attitude to Desistance

This protective domain refers to optimistic change-enhancing cognitive patterns Individuals with protective factors in this domain are likely to *Find positive outcomes from negative events* and see *Treatment as a turning point* (both sexual offending desistance factors) As a result they are often motivated to work with treatment providers or other helping agencies (reflected in general protective factors *Motivation for treatment* and *Medication*)

In summary, eight protective domains are proposed based on being healthy poles of well-established sexual offending risk domains or being desistance factors for sexual offending Additional support for the proposed domains is found in general protective factors from the SAPROF, which preliminarily proved predictive of sexual and violent re-offending by sexual offenders. We propose that each domain represents an underlying propensity, which may be pre-existing, may have developed as the individual reflects on his life and the consequences of his offending, or may have developed as a prosthetic through a rehabilitative intervention The presence of each propensity may be observed in a range of possible behavioral indicators, or manifestations of the propensity

Limitations

The biggest limitation of this exploration study of protective factors for future offending for those who have sexually offended in the past is that very few studies on this topic are available For the general protective factors assessment tool discussed few studies have been found on sexual offender samples Similarly, only one specific empirical desistance study was found for sexual offending The results from these studies need to be replicated in other sexual offender samples to be able to generalize the findings Given the limited resources, the current study design aimed to include direct as well as indirect evidence for the proposed domains Nevertheless, the domains are not supported by a large body of empirical evidence and should be viewed as a preliminary proposal This article presents a first step toward more in-depth studies into protective factors for sexual offending and their potential value for risk assessment and treatment of sexually violent offenders. Hopefully, this will spark enthusiasm among researchers and clinicians to incorporate protective factors in their studies of sexual offending, which will result in a broader evidence base for more comprehensive sexual offender assessment.

Conclusion and Implications for Research

De Ruiter and Nicholls (2011) describe the study of protective factors as a new frontier in forensic mental health which needs to be explored to increase our knowledge on

what works in risk prevention. We know very little about what those who have offended sexually value, what makes them happy, and what skills and strengths are related to their desistance from offending. The desistance literature is very sparse in relation to sexual offending. We therefore urgently need desistance studies that focus on sexual offending. We also need to further investigate whether and to what extent assessments of protective factors increase the accuracy of SVR assessment. We may need to create additional structured schemes for identifying protective factors specifically for sexual reoffending, and use these routinely, so that we can collect and compare data from samples of individuals convicted of different types of sexual crimes and relate these to risk focused tools, treatment efforts, and recidivism outcome.

The above described domain of *Healthy sexual interests* is the only proposed protective domain which is identified as exclusively relevant for *sexual* offending. It would be valuable to develop tools for adult sexual offenders that specifically assess protective factors in this domain, in a similar fashion as has been done for juvenile offenders in the DASH-13 (Worling, 2013). The other seven domains can be considered general protective domains and are represented in many of the factors in the SAPROF, which is not surprising given that this tool provided input for the domains. These factors can primarily be described as "dynamic improving," meaning that potentially they could change for the better, serve as positive goals for treatment efforts and be used for evaluating treatment progress. Large-scale prospective follow-up research is needed to be able to validate their assumed potential for desistance from sexual offending.

In this article, we have argued for a greater focus on protective factors in assessment, research and practice. In recent years, those who work in sexual offender treatment have shown an extensive interest in the *Good Lives Model* of offender rehabilitation (Ward & Gannon, 2006). As a strengths-based approach to understanding and treating sexual offending this has played an important role in enabling treatment practice to move away from the more confrontational approaches that were typical in the 1980s. However, the field of sexual offending risk assessment still uses a predominantly deficit-focused approach. It takes some years to collect and analyze the data necessary to validate new risk prediction and prevention items or scales. We therefore believe that it is necessary for those engaged in sexual offender assessment to incorporate the notion of protective factors into their research and practice as a matter of urgency. A sea change in our approach to risk assessment could yield multiple benefits, both to treatment clients and to society.

Authors' Note

Michiel de Vries Robbé is co-author of one of the tools described in the manuscript (SAPROF)

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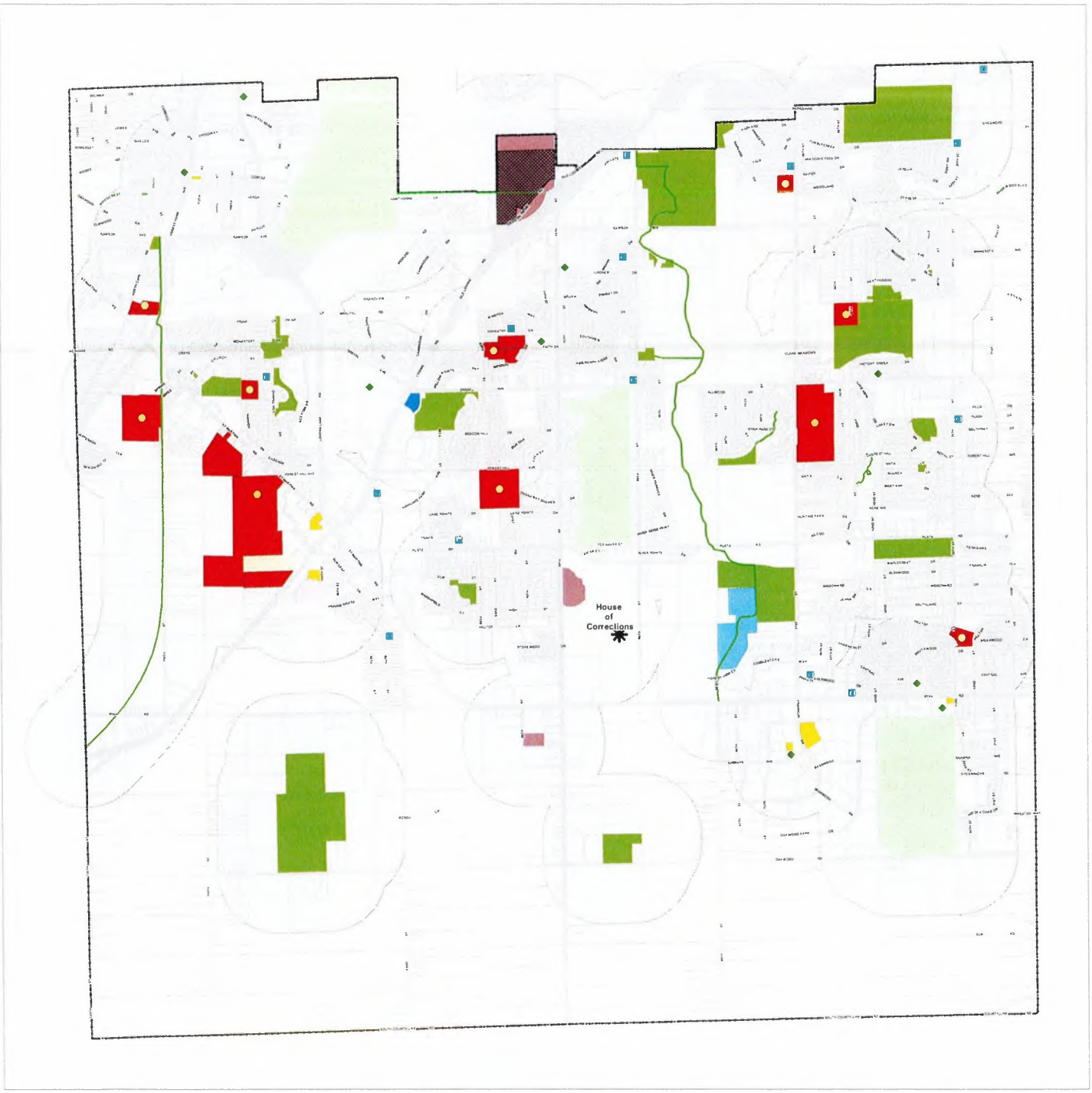
Locations/Facilities and Related Buffer Zone Reference Map

Section 15-3.0702C of the UDO and Chapter 167 of the City of Franklin, WI Municipal Code



City of Franklin

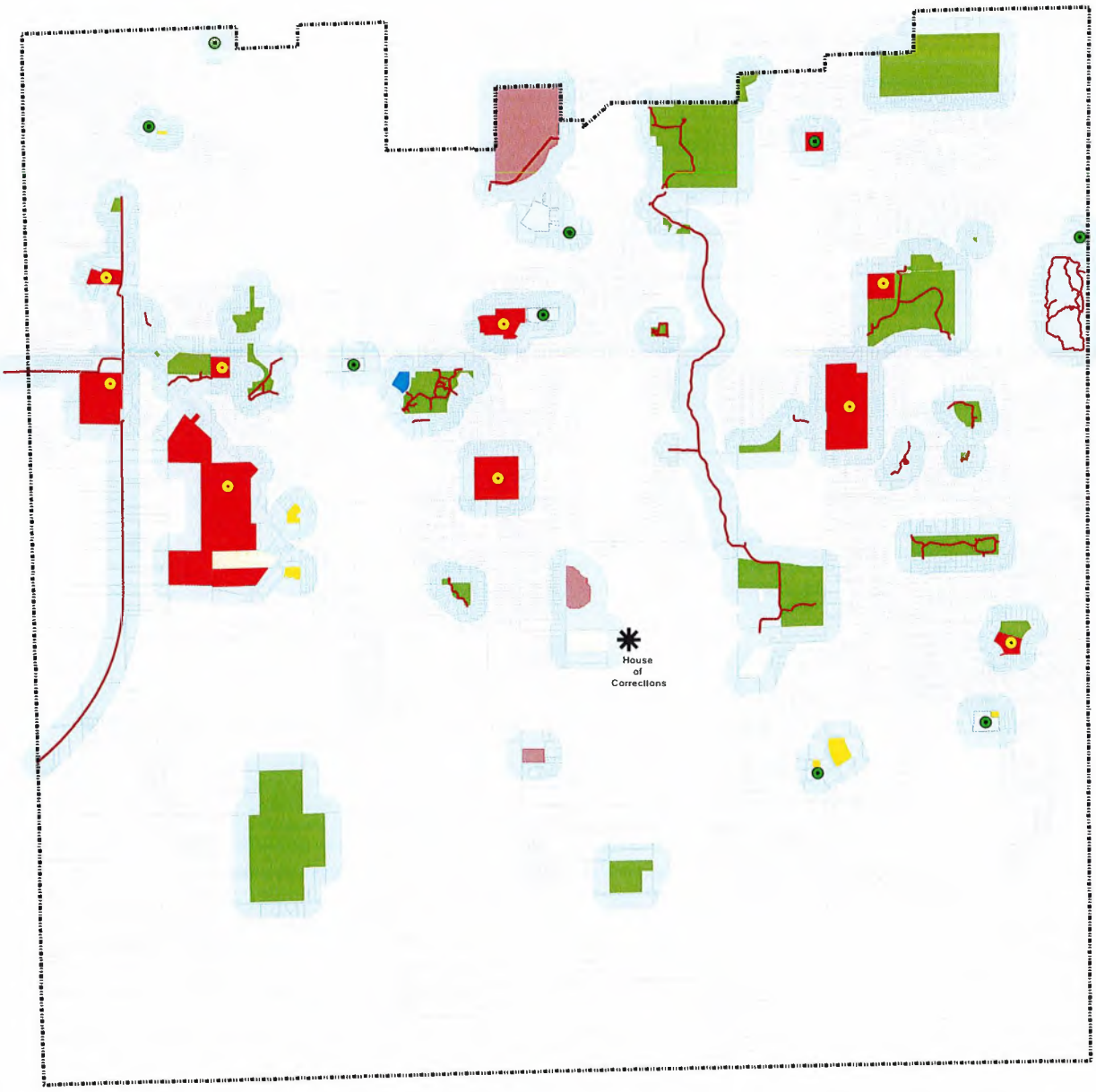
Version Edit Date: 5/30/2017

2000' Buffer from Included Facilities
CBRF Locations
School Child Care Facility
Private Child Care Facility
School Site
Gym, Ft. Facility, or Pool
Movie Theatre
Sports Complex
Ball Field
Baseball Field
Golf Course
Library
Park
Soccer Field
Trail

N

Locations/Facilities and Related Buffer Zone Reference Map

Section 15-3.0702C of the UDO and Chapter 167 of the City of Franklin, WI Municipal Code



Version Edit Date: 3/24/2021

Franklin
WISCONSIN

500 Buffer
Public School Child Care Facility
School Site
Private Child Care Facility
Private Child Care Facility Parcel
Trail
Gym, Fit. Facility, or Pool
Dance Studio
Ski Hill
Baseball Field
Golf Course
Library
Park
Soccer Field

Living Units Within the Buffer - 3,825*
Living Units Outside the Buffer - 10,784*

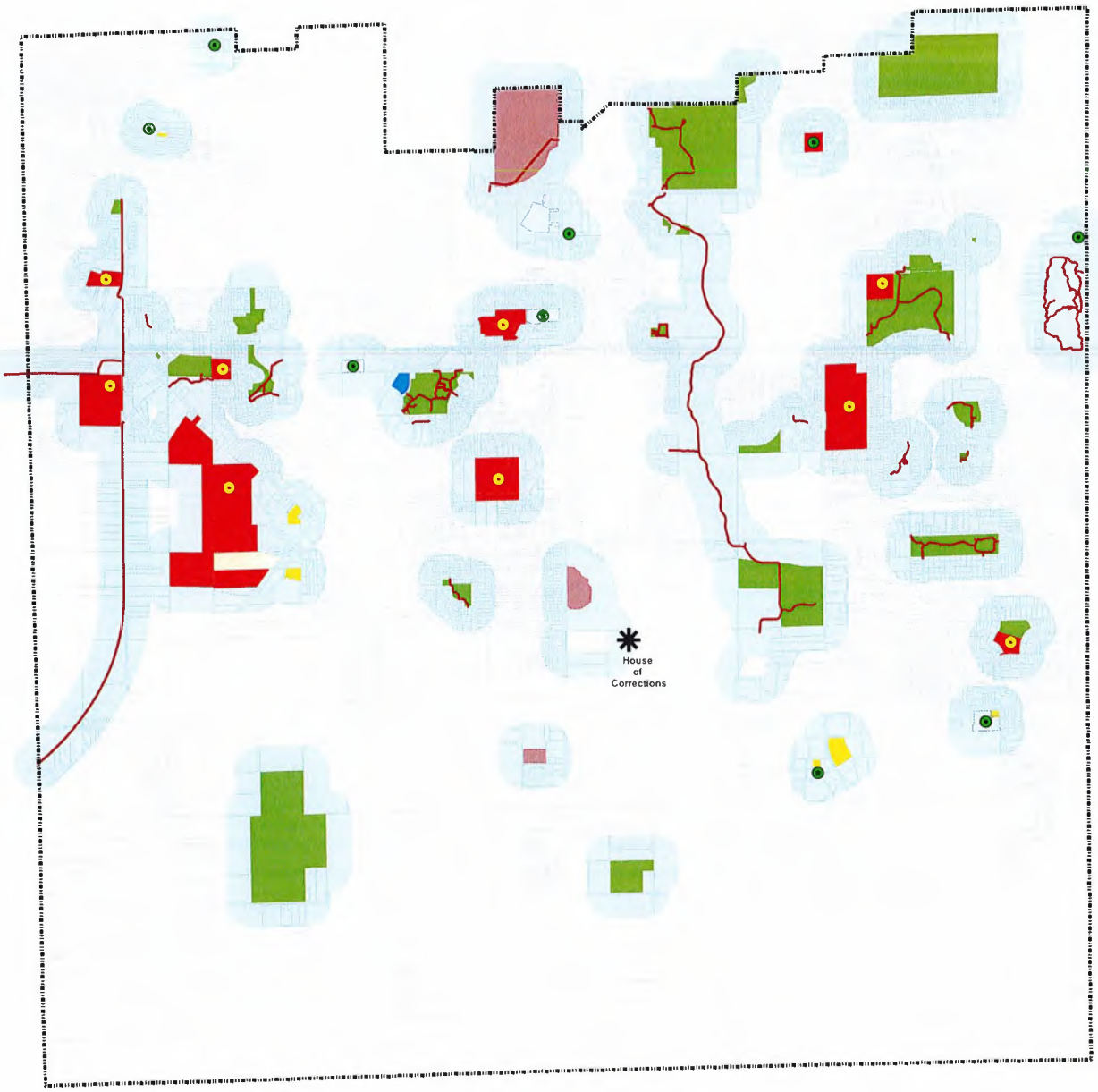
* These numbers are approximate

N

0 1,000 2,000 4,000 6,000 8,000 Feet

Locations/Facilities and Related Buffer Zone Reference Map

Section 15-3.0702C of the UDO and Chapter 167 of the City of Franklin, WI Municipal Code



Version Edit Date 3/24/2021

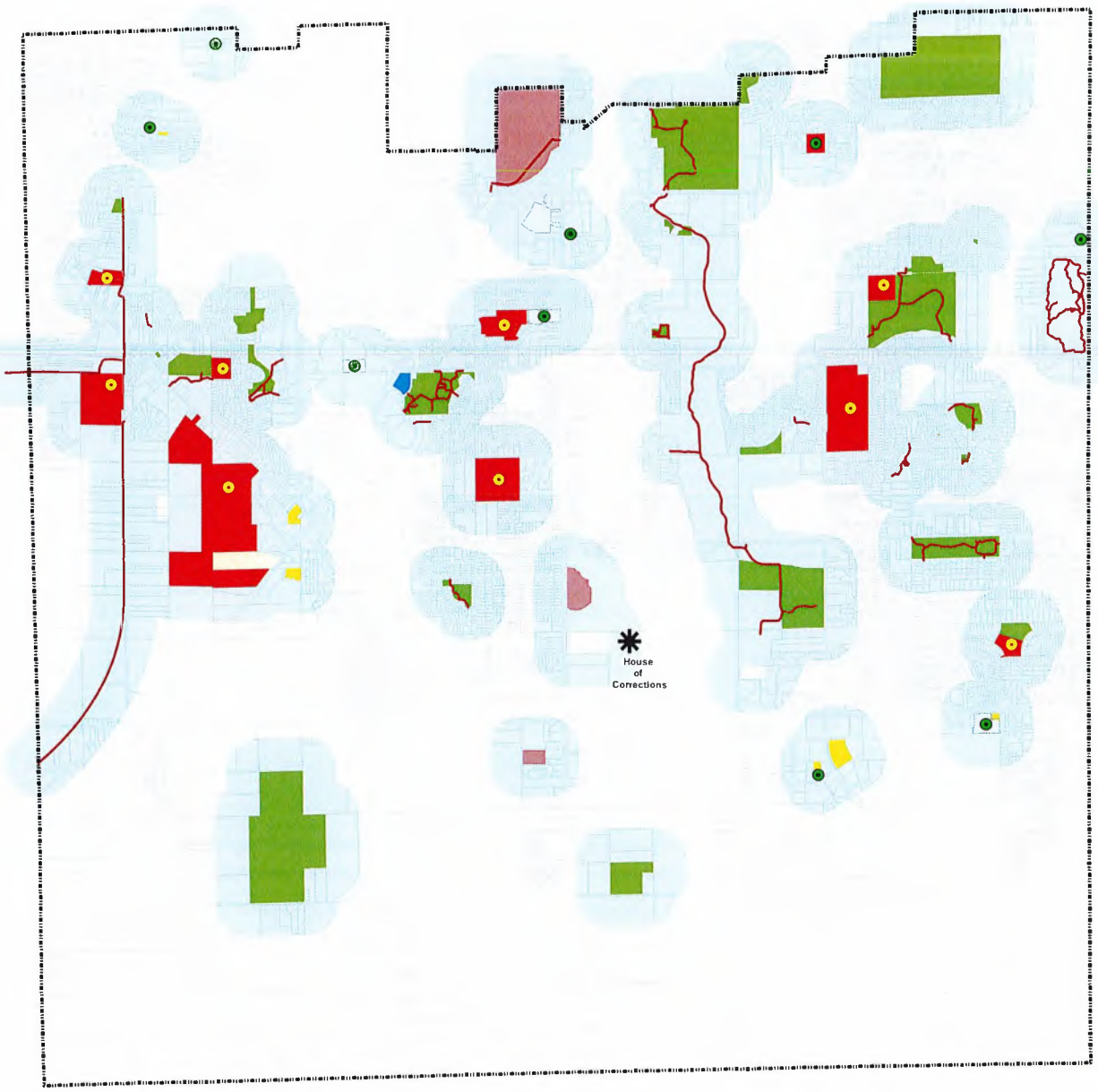
Franklin
WISCONSIN

Living Units Within the Buffer - 6,275*
Living Units Outside the Buffer - 8,334*

* These numbers are approximate

Locations/Facilities and Related Buffer Zone Reference Map

Section 15-3.0702C of the UDO and Chapter 167 of the City of Franklin, WI Municipal Code



Version Edit Date: 3/24/2021

Franklin WISCONSIN

1000' Buffer
Public School Child Care Facility
School Site
Private Child Care Facility
Private Child Care Facility Parcel
Trail
Gym, Fit. Facility, or Pool
Dance Studio
Soccer
Baseball Field
Golf Course
Library
Park
Soccer Field

Living Units Within the Buffer - 7,856*
Living Units Outside the Buffer - 6,753*

* These numbers are approximate

N

0 1,000 2,000 4,000 5,000 8,000 Feet

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 6/17/2025
REPORTS & RECOMMENDATIONS	**Resolution to Waive Floodplain Land Use Permit Filing Fees for Specific Properties**	ITEM NUMBER G. 3.

SUMMARY

Nine sites located in seven properties within the City of Franklin were granted building permits or other approvals without receiving the required floodplain land use permits due to an administrative oversight. This issue was identified during the FEMA Community Assistance Visit (CAV), prompting a coordinated compliance effort with FEMA and the Wisconsin Department of Natural Resources (DNR).

DESCRIPTION

In response to this issue, the Planning Department has begun working with affected property owners to bring these cases into compliance. One application has been received, with six more expected to follow. To promote resolution and acknowledge that these errors were not the fault of property owners, staff recommends waiving filing fees for these sites:

- Site 6: 7421 S. North Cape Road.
- Site 14: 9676 S. 35th Street.
- Site 15: 9633 S 35th Street.
- Site 16: 5600 W. Rawson Avenue.
- Sites 18, 19 & 20: 7005 S. Ballpark Drive.
- Site 21: 8875 W Willow Pointe Parkway.
- Site 24: 10100 S. 76th Street.

A formal waiver process does not currently exist for these circumstances; therefore, Council approval is required. This one-time, case-limited action supports voluntary compliance and avoids penalizing residents for administrative shortcomings. It also demonstrates good faith with FEMA and DNR. If adopted, this waiver would apply to the sites listed above, only for structures that received a building permit or other city approvals.

FISCAL NOTE

Minimal fiscal impact anticipated. Filing fee revenue from seven applications will be waived as part of the compliance initiative. The floodplain land use permit fee is $210 for residential development (one lot) and $500 for other development. Five properties are residential and two nonresidential, so staff estimates that total fees to be waived are $2,050.

COUNCIL ACTION REQUESTED

Motion to adopt Resolution 2025-___ authorizing a one-time waiver of floodplain land use permit filing fees for the seven properties identified during the FEMA CAV process that received building approvals without the appropriate floodplain permits. This limited waiver will only apply to properties confirmed to be part of this specific compliance initiative and shall not establish precedent for future waiver requests.

Planning RM / DOA KH

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

Draft KH/RM 6-5-25

RESOLUTION NO. 2025-____

A RESOLUTION AUTHORIZING A ONE-TIME WAIVER OF FLOODPLAIN LAND USE PERMIT FILING FEES FOR SPECIFIC PROPERTIES IDENTIFIED DURING THE FEDERAL EMERGENCY MANAGEMENT AGENCY COMMUNITY ASSISTANCE VISIT PROCESS

WHEREAS, during a recent Community Assistance Visit (CAV) conducted by the Federal Emergency Management Agency (FEMA), it was discovered that seven properties within the City of Franklin received building permits or related approvals without the required floodplain land use permits due to an internal administrative oversight; and

WHEREAS, the City of Franklin is actively working with the Wisconsin Department of Natural Resources (DNR) and FEMA to bring the affected properties into full regulatory compliance; and

WHEREAS, the property owners involved were not at fault for the oversight and have demonstrated a willingness to cooperate in resolving the compliance issue; and

WHEREAS, to encourage timely and cooperative compliance and to avoid financially penalizing residents for an error not of their own making, the City Administration recommends a one-time waiver of the associated permit filing fees; and

WHEREAS, there is currently no formal mechanism in place to waive these fees under such circumstances, requiring direct authorization from the Common Council.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin, Wisconsin:

1. That a one-time waiver of the floodplain land use permit filing fees is hereby approved for the seven properties identified during the 2025 FEMA CAV process, provided that such properties were issued building permits or other related approvals without the necessary floodplain permits due to administrative error.

2. That this waiver shall be strictly limited to the properties subject to the current compliance initiative, and shall not be construed to establish precedent for any future requests or circumstances. These properties are listed below:

   Site 6: 7421 S. North Cape Road.
   Site 14: 9676 S. 35th Street.
   Site 15: 9633 S 35th Street.
   Site 16: 5600 W. Rawson Avenue.
   Sites 18, 19 & 20: 7005 S. Ballpark Drive.
   Site 21: 8875 W Willow Pointe Parkway.
   Site 24: 10100 S. 76th Street.

3. That City staff are hereby directed to document this action and communicate the waiver to affected property owners as part of the compliance process.

BE IT FURTHER RESOLVED, that the City affirms its commitment to regulatory compliance and to working collaboratively with FEMA and the Wisconsin DNR to ensure proper administration of floodplain permitting requirements moving forward.

Introduced at a regular meeting of the Common Council of the City of Franklin on this 17th day of June 2025.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin on this 17th day of June 2025.

APPROVED:

_____
John R. Nelson, Mayor

ATTEST:

_____
Shirley J. Roberts, City Clerk

AYES ____ NOES ____ ABSENT ____

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 06/17/2025
REPORTS & RECOMMENDATIONS	**Ordinance to amend the Municipal Code as it pertains to the Architectural Review Board**	ITEM NUMBER G. 4.

This Municipal Code amendment is to repeal Section 10-16 Architectural Review Board after the adoption of the new Unified Development Ordinance on May 6, 2025 (Ord. 2025-2675).

Section 10-16 Architectural Review Board only refers to the former Unified Development Ordinance (UDO) Division 15-10.0300 which has been repealed by the new UDO. In order to streamline the permitting process for single-family and two-family dwellings, the new UDO removed the Architectural Review step performed by the Architectural Review Board, so this Municipal Code section is no longer needed with the new UDO. Below is the Municipal Code section to be repealed:

> § 10-16. Architectural Board.
> [Amended 3-6-2001 by Ord. No. 2001-1639]
>
> See Division 15-10.0300 of the City of Franklin Unified Development Ordinance.

COUNCIL ACTION REQUESTED

A motion to adopt Ordinance No. 2025-_____, to amend the Municipal Code as it pertains to the Architectural Review Board.

Planning Dept. / RM

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

Draft RM [06-10-2025]

ORDINANCE NO. 2025-____

AN ORDINANCE TO AMEND THE MUNICIPAL CODE AS IT PERTAINS TO THE ARCHITECTURAL REVIEW BOARD

WHEREAS, the Common Council on May 6, 2025, having adopted a new Unified Development Ordinance by Ordinance No. 2025-2675; and

WHEREAS, the new Unified Development Ordinance streamlined the permitting process for single-family and two-family dwellings by removing the Architectural Review step performed by the Architectural Review Board; and

WHEREAS, the Common Council having reviewed and having determined that the proposed amendment will serve to facilitate an efficient permitting process for single-family and two-family dwellings, and promote the health, safety and welfare of the Community.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: §10-16 of the Municipal Code, pertaining to the Architectural Review Board is hereby repealed.

SECTION 2: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 3: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 4: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this ___th day of _____, 2025.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____th day of _____, 2025.

APPROVED:

_____
John R. Nelson, Mayor

ATTEST:

_____
Shirley J. Roberts, City Clerk

AYES _____ NOES _____ ABSENT _____

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 06/17/2025
REPORTS & RECOMMENDATIONS	**Resolution to ratify and re-approve Resolution No. 2024-8084, a resolution conditionally approving a 1 lot Certified Survey Map, being a redivision of Lot 2, Certified Survey Map No. 8318, Outlot 1 of Certified Survey Map No. 6313, and Outlot 1 of Certified Survey Map No. 5401 and lands all being part of the Northwest 1/4 of the Northwest 1/4 of Section 10, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin (by Poths General LLC, Applicant, Initech LLC, Property Owner) (approximately 7154 South 76th Street)**	ITEM NUMBER G. 5. Ald. District #5

The applicant is requesting re-approval of the certified survey map for the Poths General development located at approximately 7154 South 76th Street. The subject certified survey map was previously recommended for approval by the Plan Commission at their December 21, 2023 meeting and approved at the January 3, 2024 Common Council meeting via Resolution No. 2024-8084.

The expiration timeframe for certified survey maps is below. The Plan Commission approval does not expire until December 21, 2026; however, the Common Council approval expired on January 3, 2025. As such, the applicant is requesting reapproval of the certified survey map to allow for the recording of the CSM.

> Expiration (Wis. Stat 236.34(2)(b)1.):
> The certified survey map is offered for record within 12 months after the date of the last approval of the map and within 36 months after the date of the first approval of the map.

COUNCIL ACTION REQUESTED

A motion to adopt Resolution 2025-_____, a resolution to ratify and re-approve Resolution No. 2024-8084, a resolution conditionally approving a 1 Lot Certified Survey Map, such map being a redivision of all of Lot 2, Certified Survey Map No. 8318, Outlot 1 of Certified Survey Map No. 6313, and Outlot 1 of Certified Survey Map No. 5401 and lands all being part of the Northwest 1/4 of the Northwest 1/4 of Section 10, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin (By Poths General LLC, Applicant) (Initech LLC, Property Owner) (approximately 7154 South 76th Street).

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO. 2025-_____

A RESOLUTION TO RATIFY AND RE-APPROVE RESOLUTION NO. 2024-8084, A RESOLUTION CONDITIONALLY APPROVING A 1 LOT CERTIFIED SURVEY MAP, BEING A REDIVISION OF LOT 2, CERTIFIED SURVEY MAP NO. 8318, OUTLOT 1 OF CERTIFIED SURVEY MAP NO. 6313, AND OUTLOT 1 OF CERTIFIED SURVEY MAP NO. 5401 AND LANDS ALL BEING PART OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 10, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, COUNTY OF MILWAUKEE, STATE OF WISCONSIN
(BY POTHS GENERAL LLC, APPLICANT, INITECH LLC, PROPERTY OWNER)
(APPROXIMATLEY 7154 SOUTH 76TH STREET)

WHEREAS, the City of Franklin, Wisconsin, having received an application for approval of a certified survey map, such map being a redivision of all of Lot 2, Certified Survey Map No. 8318, Outlot 1 of Certified Survey Map No. 6313, and Outlot 1 of Certified Survey Map No. 5401 and lands all being part of the Northwest 1/4 of the Northwest 1/4 of Section 10, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, which is bounded and described as follows:

Commencing at Northwest corner of said Northwest 1/4 of said Section 10; thence South 00°15'45" East along the West line of said Northwest 1/4 Section 596.70 feet to a point; thence North 89°59'53" East 60.00 feet to the East line of South 76th Street (C.T.H. U) and the point of beginning of lands described hereinafter; thence North 89°59'53" East along the South line of Lot 1 of Certified Survey Map No. 8318 a distance of 228.57 feet to the East line of said Lot 1; thence North 00°00'07" West along said East line 68.60 feet to a point; thence North 89°59'53" East along said East line 52.02 feet to a point; thence North 00°00'07" West along said East line 144.04 feet to a point; thence North 22°40'40" West along said East line 56.53 feet to the Southeast corner of Parcel 3 of Certified Survey Map No. 4828; thence North 26°53'02" West along the East line of said Parcel 3 a distance of 178.51 feet to a point; thence North 00°15'45" West along said East line 100.00 feet to a point on the South line of West Rawson Avenue (C.T.H. BB); thence North 89°26'54" East along said South line 50.00 feet to the Northwest corner of Parcel 4 of Certified Survey Map No. 4828; thence South 00°15'45" East along the West line of said Parcel 4 a distance of 110.74 feet to a point; thence South 26°53'02" East along said West line 110.74 feet to the South line of said Parcel 4; thence North 89°26'36" East along said South line 169.93 feet to a point on the West line of Parcel 1 of Certified Survey Map No. 5689; thence South 00°08'22" East along said West line 40.00 feet to the South line of said Parcel 4; thence North 89°26'36" East along said South line 90.53 feet to the West line of said Parcel 4; thence South 00°15'45" East along said West line 275.00 feet to the South line of Parcel 2 of Certified Survey Map No. 4483; thence North 89°26'36" East along said South line 270.00 feet to the East line of said Parcel 2; thence North 00°15'45" West along said East line 225.00 feet to the Southwest corner of Certified Survey Map No. 6811; thence North 89°26'54" East along the South line of said Certified Survey Map 458.68 feet to the West line of Phase VII

Westminster Condominiums; thence South 00°11'53" East along said West line and the West line of Dover Hill Addition No. 1 Subdivision 946.39 feet to the North line of Carter Grove Condominium; thence South 89°28'54" West along said North line 869.44 feet to the Southeast corner of Parcel 1 of Certified Survey Map No. 5401; thence North 00°31'06" West along the East line of said Parcel 1 a distance of 90.00 feet to the North line of said Parcel 1; thence South 89°28'54" West along said North line 111.56 feet to a point; thence North 62°22'32" West along said North line 63.59 feet to a point; thence South 89°28'54" West along said North line 230.00 feet to a point on the East line of South 76th Street (C.T.H. U); thence North 00°15'45" West along said East line 603.29 feet to the point of beginning.

Property located at approximately 7154 South 76th Street, bearing Tax Key Nos. 756 9993 012, 756 9993 016, and 756 9993 021, Poths General LLC, applicant; said certified survey map having been reviewed by the City Plan Commission and the Plan Commission having recommended approval thereof pursuant to certain conditions; and

WHEREAS, the Common Council having reviewed such application and Plan Commission recommendation and the Common Council having determined that such proposed certified survey map is appropriate for approval pursuant to law upon certain conditions, and the Common Council having approved the certified survey map pursuant to its adoption of Resolution No. 2024-8084 on January 3, 2024, a copy of which is annexed hereto; and

WHEREAS, Resolution No. 2024-8084 includes conditions provisions, all of which have been satisfied and met subsequent to the date of adoption of the Resolution, subject to any remaining technical corrections required thereto, and the provision therein in part provides "that upon the satisfaction of the above conditions within 180 days of the date of adoption of this Resolution, same constituting final approval, and pursuant to all applicable statutes and ordinances and lawful requirements and procedures for the recording of a certified survey map, the City Clerk is hereby directed to obtain the recording of the Certified Survey Map"; for clarity purposes and for the record to provide the actual date of the final and last approval of the certified survey map, the Common Council having determined it reasonable and appropriate to adopt a resolution stating same.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Certified Survey Map submitted by Poths General LLC, as described above, as approved by Resolution 2024-8084, be and the same is hereby re-approved, subject to any technical corrections required by the original approval; that Resolution No. 2024-8084 be and the same is hereby ratified; and that this Resolution constitutes the final and last approval by the Common Council of the Certified Survey Map submitted by Poths General LLC, as described above.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to obtain the recording of the Certified Survey Map, certified by owner, Initech LLC, with the Office of the Register of Deeds for Milwaukee County.

Introduced at a regular meeting of the Common Council of the City of Franklin this 17th day of June, 2025.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 17th day of June, 2025.

APPROVED:

_____
John R. Nelson, Mayor

ATTEST:

_____
Shirley J. Roberts, City Clerk

AYES _____ NOES _____ ABSENT _____

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO. 2024-8084

A RESOLUTION CONDITIONALLY APPROVING A 1 LOT CERTIFIED SURVEY MAP, BEING A REDIVISION OF LOT 2, CERTIFIED SURVEY MAP NO. 8318, OUTLOT 1 OF CERTIFIED SURVEY MAP NO. 6313, AND OUTLOT 1 OF CERTIFIED SURVEY MAP NO. 5401 AND LANDS ALL BEING PART OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 10, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, COUNTY OF MILWAUKEE, STATE OF WISCONSIN
(BY POTHS GENERAL LLC, APPLICANT, INITECH LLC, PROPERTY OWNER)
(APPROXIMATELY 7154 SOUTH 76TH STREET)

WHEREAS, the City of Franklin, Wisconsin, having received an application for approval of a certified survey map, such map being a redivision of all of Lot 2, Certified Survey Map No. 8318, Outlot 1 of Certified Survey Map No. 6313, and Outlot 1 of Certified Survey Map No. 5401 and lands all being part of the Northwest 1/4 of the Northwest 1/4 of Section 10, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, which is bounded and described as follows:

Commencing at Northwest corner of said Northwest 1/4 of said Section 10; thence South 00°15'45" East along the West line of said Northwest 1/4 Section 596.70 feet to a point; thence North 89°59'53" East 60.00 feet to the East line of South 76th Street (C.T.H. U) and the point of beginning of lands described hereinafter; thence North 89°59'53" East along the South line of Lot 1 of Certified Survey Map No. 8318 a distance of 228.57 feet to the East line of said Lot 1; thence North 00°00'07" West along said East line 68.60 feet to a point; thence North 89°59'53" East along said East line 52.02 feet to a point; thence North 00°00'07" West along said East line 144.04 feet to a point; thence North 22°40'40" West along said East line 56.53 feet to the Southeast corner of Parcel 3 of Certified Survey Map No. 4828; thence North 26°53'02" West along the East line of said Parcel 3 a distance of 178.51 feet to a point; thence North 00°15'45" West along said East line 100.00 feet to a point on the South line of West Rawson Avenue (C.T.H. BB); thence North 89°26'54" East along said South line 50.00 feet to the Northwest corner of Parcel 4 of Certified Survey Map No. 4828; thence South 00°15'45" East along the West line of said Parcel 4 a distance of 110.74 feet to a point; thence South 26°53'02" East along said West line 110.74 feet to the South line of said Parcel 4; thence North 89°26'36" East along said South line 169.93 feet to a point on the West line of Parcel 1 of Certified Survey Map No. 5689; thence South 00°08'22" East along said West line 40.00 feet to the South line of said Parcel 4; thence North 89°26'36" East along said South line 90.53 feet to the West line of said Parcel 4; thence South 00°15'45" East along said West line 275.00 feet to the South line of Parcel 2 of Certified Survey Map No. 4483; thence North 89°26'36" East along said South line 270.00 feet to the East line of said Parcel 2; thence North 00°15'45" West along said East line 225.00 feet to the Southwest corner of Certified Survey Map No. 6811; thence North 89°26'54" East along the South line of said Certified Survey Map 458.68 feet to the West line of Phase VII Westminster Condominiums; thence South 00°11'53" East along said West line and the West line of Dover Hill Addition No. 1 Subdivision 946.39 feet to the North line of Carter Grove Condominium; thence South 89°28'54" West along said North line 869.44 feet to the Southeast corner of Parcel 1 of Certified Survey Map No. 5401; thence North 00°31'06" West along the

East line of said Parcel 1 a distance of 90.00 feet to the North line of said Parcel 1; thence South 89°28'54" West along said North line 111.56 feet to a point; thence North 62°22'32" West along said North line 63.59 feet to a point; thence South 89°28'54" West along said North line 230.00 feet to a point on the East line of South 76th Street (C.T.H. U); thence North 00°15'45" West along said East line 603.29 feet to the point of beginning.

Property located at approximately 7154 South 76th Street, bearing Tax Key Nos. 756 9993 012, 756 9993 016, and 756 9993 021, Poths General LLC, applicant; said certified survey map having been reviewed by the City Plan Commission and the Plan Commission having recommended approval thereof pursuant to certain conditions; and

WHEREAS, the Common Council having reviewed such application and Plan Commission recommendation and the Common Council having determined that such proposed certified survey map is appropriate for approval pursuant to law upon certain conditions.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Certified Survey Map submitted by Poths General LLC, as described above, be and the same is hereby approved, subject to the following conditions:

1. That any and all objections made and corrections required by the City of Franklin, by Milwaukee County, and by any and all reviewing agencies, shall be satisfied and made by the applicant, prior to recording.

2. That all land development and building construction permitted or resulting under this Resolution shall be subject to impact fees imposed pursuant to §92-9 of the Municipal Code or development fees imposed pursuant to §15-5.0110 of the Unified Development Ordinance, both such provisions being applicable to the development and building permitted or resulting hereunder as it occurs from time to time, as such Code and Ordinance provisions may be amended from time to time.

3. Each and any easement shown on the Certified Survey Map shall be the subject of separate written grant of easement instrument, in such form as provided within the *City of Franklin Design Standards and Construction Specifications* and such form and content as may otherwise be reasonably required by the City Engineer or designee to further and secure the purpose of the easement, and all being subject to the approval of the Common Council, prior to the recording of the Certified Survey Map.

4. Poths General LLC, successors and assigns, and any developer of the Poths General LLC one (1) lot certified survey map project, shall pay to the City of Franklin the amount of all development compliance, inspection and review fees incurred by the City of Franklin, including fees of consults to the City of Franklin, within 30 days of invoice for same. Any violation of this provision shall be a violation of the Unified Development Ordinance, and subject to §15-9.0502 thereof and §1-19 of the Municipal Code, the general penalties and remedies provisions, as amended from time to time.

5. The approval granted hereunder is conditional upon Poths General LLC and the 1 lot certified survey map project for the property located at approximately 7154 South 76th Street: (i) being in compliance with all applicable governmental laws, statutes, rules, codes, orders and ordinances; and (ii) obtaining all other governmental approvals, permits, licenses and the like, required for and applicable to the project to be developed and as presented for this approval.
6. The applicant shall provide a Conservation Easement for natural resources to be protected, to be recorded with the CSM.
7. The applicant must resolve any technical corrections required by the Engineering or Planning Department, or the City Attorney's Office prior to the recording of the Certified Survey Map.

BE IT FURTHER RESOLVED, that the Certified Survey Map, certified by owner, Initech LLC, be and the same is hereby rejected without final approval and without any further action of the Common Council, if any one, or more than one of the above conditions is or are not met and satisfied within 180 days from the date of adoption of this Resolution.

BE IT FINALLY RESOLVED, that upon the satisfaction of the above conditions within 180 days of the date of adoption of this Resolution, same constituting final approval, and pursuant to all applicable statutes and ordinances and lawful requirements and procedures for the recording of a certified survey map, the City Clerk is hereby directed to obtain the recording of the Certified Survey Map, certified by owner, Initech LLC, with the Office of the Register of Deeds for Milwaukee County.

Introduced at a regular meeting of the Common Council of the City of Franklin this 3rd day of January, 2024.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 3rd day of January, 2024.

APPROVED:

John R. Nelson, Mayor

ATTEST:

Shirley J. Roberts, City Clerk

AYES 6 NOES 0 ABSENT 0

CERTIFIED SURVEY MAP NO. _____

A redivision of Lot 2, Certified Survey Map No 8318, Outlot 1 of Certified Survey Map No 6313, and Outlot 1 of Certified Survey Map No 5401 and lands all being part of the Northwest 1/4 of the Northwest 1/4 of Section 10, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin

All bearings are referenced to the Wisconsin State Plane Coordinate System (South zone) NAD83, in which the North line of the NW 1/4, Section 10, Township 5 North, Range 21 East bears N89°26'54"E

Owner
Initech, LLC
7044 South Ballpark Drive Suite 305
Franklin, WI 53132

Note Parcel 1 is served by public sewer and water

LEGEND
- Ⓓ Indicates land dedicated to the City of Franklin for Public Road Purposes
- ● Indicates found 1" iron pipe
- ○ Indicates set 1" iron pipe, 18" in length, 1 13 lbs per lineal foot
- ⊙ Indicates found 3/4" iron rod
- △ Indicates found PK nail

VICINITY MAP
NW 1/4 OF SEC. 10
T 5 N, R 21 E
W RAWSON AVE.
SITE
S. 76TH ST
1"=2000'

WISCONSIN
DONALD C CHAPUT
S-1316
MILWAUKEE
WI
LAND SURVEYOR

0 200 400
Graphic Scale 1" = 200'

CONC. MON WITH BRASS CAP
NW COR OF NW 1/4 SEC. 10, T5N, R21E

CONC. MON. WITH BRASS CAP
NE COR OF NW 1/4 SEC. 10, T5N, R21E

N 340,262.83 (REC. N89°27'01"E)
E.2,501,748.93

W. RAWSON AVENUE (C.T.H. BB)

NORTH LINE OF THE NW 1/4, SEC. 10
N89°26'54"E

75'

P.O.C.

N89°26'54"E 50.00'

WEST LINE OF THE NW 1/4, SEC. 10
N00°15'45"W 2641.38'
596.70'

(REC N00°15'38"W)
N00°15'45"W 100.00"

PARCEL 4
C.S.M. NO. 4828

PARCEL 1
C.S.M. NO. 5689

(REC N89°26'43"E)
N89°26'36"E 169.93'

L6 110.74'

L5

L4 178.51'

PARCEL 3
C.S.M. NO 4828

10' SETBACK

L8 90.53'

L7 40.00'

L3 56.53'

N00°00'07"W 144.04'

LOT 1
C.S.M. NO 8318

(REC. NORTH)

(REC. EAST)

P.O.B.

N89°59'53"E 228.57'

L1

L2

52.02'

223.57'

5.00'

N89°59'53"E 10'

60.00'

5.00'

Ⓓ

68.60'

30' SIDE YARD SETBACK

84.5'

30.6'

50.9'

30.0'

30'

(REC S00°15'38"E)
S00°15'45"E 275.00'

(REC N00°15'25"W)
N00°15'45"W 225.00'

OUTLOT 1
C.S.M. NO. 6811
60' ROAD RESERVATION
PER CSM 6811

PARCEL 2
C S M NO 6811

PARCEL 1
C S M NO 6811

PHASE VIII
WESTMINSTER
CONDOMINIUMS

(REC N89°26'56"E)
N89°26'54"E 458.68'

PARCEL 2
C.S.M. NO 4483

(REC N89°26'43"E)
N89°26'36"E 270.00'

30' REAR YARD SETBACK

(REC S00°11'33"E)
S00°11'53"E 946.39'

LOT 42 / LOT 43 / LOT 44 / LOT 45 / LOT 48 / LOT 49 / LOT 50 / LOT 51

A D D I T I O N

H I L L

D O V E R

SOUTH 76TH STREET (C.T.H. U)

N00°15'45"W 603.29'

N00°15'45"W 603.24'

40' FRONT YARD SETBACK

40'

81.1'

33.6'

5.00'

225.00'

98.1'

230.00'

L11

63.59'

L10

111.56'

L9

PARCEL 1
C.S.M. NO. 5401

60' 60'

30' SIDE YARD SETBACK

30'

N00°31'06"W 90.00'

(REC N00°30'46"W)

S89°28'54"W 869.44'

(REC S89°29'14"W)

CARTER GROVE CONDOMINIUM

1 STORY SHOPPING CENTER

ZONING DISTRICT PDD-42

PARCEL1
AREA
1 064 863 S.F
24 4459 Acres

LINE TABLE

LINE	BEARING	DIST.
L1	N00°00'07"W	68.60'
REC.	NORTH	
L2	N89°59'53"E	52.02'
REC.	EAST	
L3	N22°40'40"W	56.53'
REC.	N22°40'33"E	
L4	N26°53'02"W	178.51'
REC.	N26°52'55"W	
L5	S00°15'45"E	110.74'
REC.	S00°15'38"E	
L6	S26°53'02"E	110.74'
REC.	S26°52'55"E	
L7	S00°08'22"E	40.00'
REC.	S00°08'15"E	
L8	N89°26'36"E	90.53'
REC.	N89°26'43"E	
L9	S89°28'54"W	111.56'
REC.	S89°29'01"W	
L10	N62°22'32"W	63.59'
REC.	N62°22'25"W	
L11	S89°28'54"W	230.00'
REC.	S89°29'01"W	

CONC. MON WITH BRASS CAP
SW COR OF NW 1/4
SEC. 10, T5N, R21E
N 337,621 67
E.2,501,760 99

CHAPUT LAND SURVEYS
234 W Florida Street
Milwaukee, WI 53204
414-224-8068
www.chaputlandsurveys.com

This instrument was drafted by Donald C Chaput Professional Land Surveyor S-1316

Date June 15, 2023
Revised December 4, 2023
Sheet 1 of 8 Sheets
Survey No 4192 02-lpm

CERTIFIED SURVEY MAP NO._____

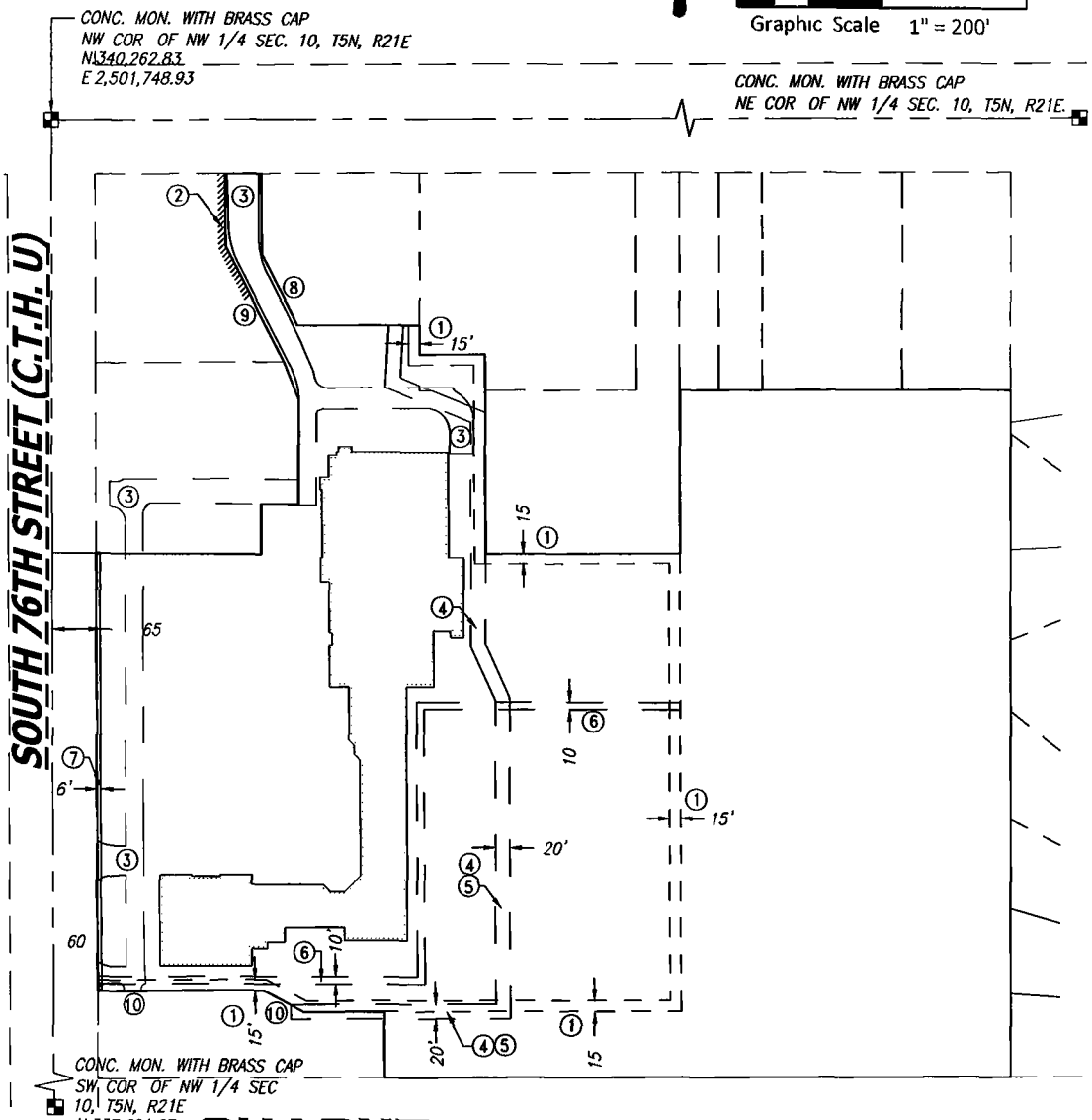
A redivision of Lot 2, Certified Survey Map No 8318, Outlot 1 of Certified Survey Map No 6313, and Outlot 1 of Certified Survey Map No 5401 and lands all being part of the Northwest 1/4 of the Northwest 1/4 of Section 10, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin

RECORDED EASEMENTS FOR REFERENCE ONLY

1· 15' PLANTING STRIP PER CSM NO. 4828 AND 8318
2: NO ACCESS PER C.S M. NO 4828
3: INGRESS EGRESS EASEMENT PER DOC NO 9958980
4: PERMANENT SANITARY SEWER EASEMENT PER DOC. NO. 6374621
5: PERMANENT SANITARY SEWER EASEMENT PER DOC NO. 6374622
6: 10' GAS EASEMENT PER DOC. NO. 6073733
7. 6' UTILITY EASEMENT PER DOC. NO. 3567794
8: ACCESS POINT PER DOC NO 6069228
9: ACCESS POINT PER DOC. NO. 6302311
10· ACCESS POINT TO LEARNING CENTER PER DOC. NO 6374286

WISCONSIN
DONALD C CHAPUT
S-1316
MILWAUKEE WI
LAND SURVEYOR

0 200 400
Graphic Scale 1" = 200'



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RECORDED EASEMENTS FOR REFERENCE ONLY

11: PERMANENT WATER MAIN EASEMENT PER DOC NO 6374620
12: 35' UTILITY EASEMENT PER DOC. NO 6385935
13: UTILITY EASEMENT PER DOC NO. 6066152
14: SIGN EASEMENT PER DOC NO. 7298632
15: WATER MAIN EASEMENT PER DOC. NO. 9956356
16: 10' GAS EASEMENT PER DOC. NO. 6400725
17: ROAD ACCESS EASEMENT PER DOC NO 6374619 (HATCH)

WISCONSIN
DONALD C CHAPUT
S-1316
MILWAUKEE
WI
LAND SURVEYOR

0 200 400
Graphic Scale 1" = 200'

CONC. MON WITH BRASS CAP
NW COR OF NW 1/4 SEC. 10, T5N, R21E
N:340,262.83
E:2,501,748.93

CONC. MON. WITH BRASS CAP
NE COR OF NW 1/4 SEC. 10, T5N, R21E.

SOUTH 76TH STREET (C.T.H. U)

CONC. MON. WITH BRASS CAP, SW COR OF NW 1/4 SEC. 10, T5N, R21E.
N:337,621.67
E 2,501,760.99

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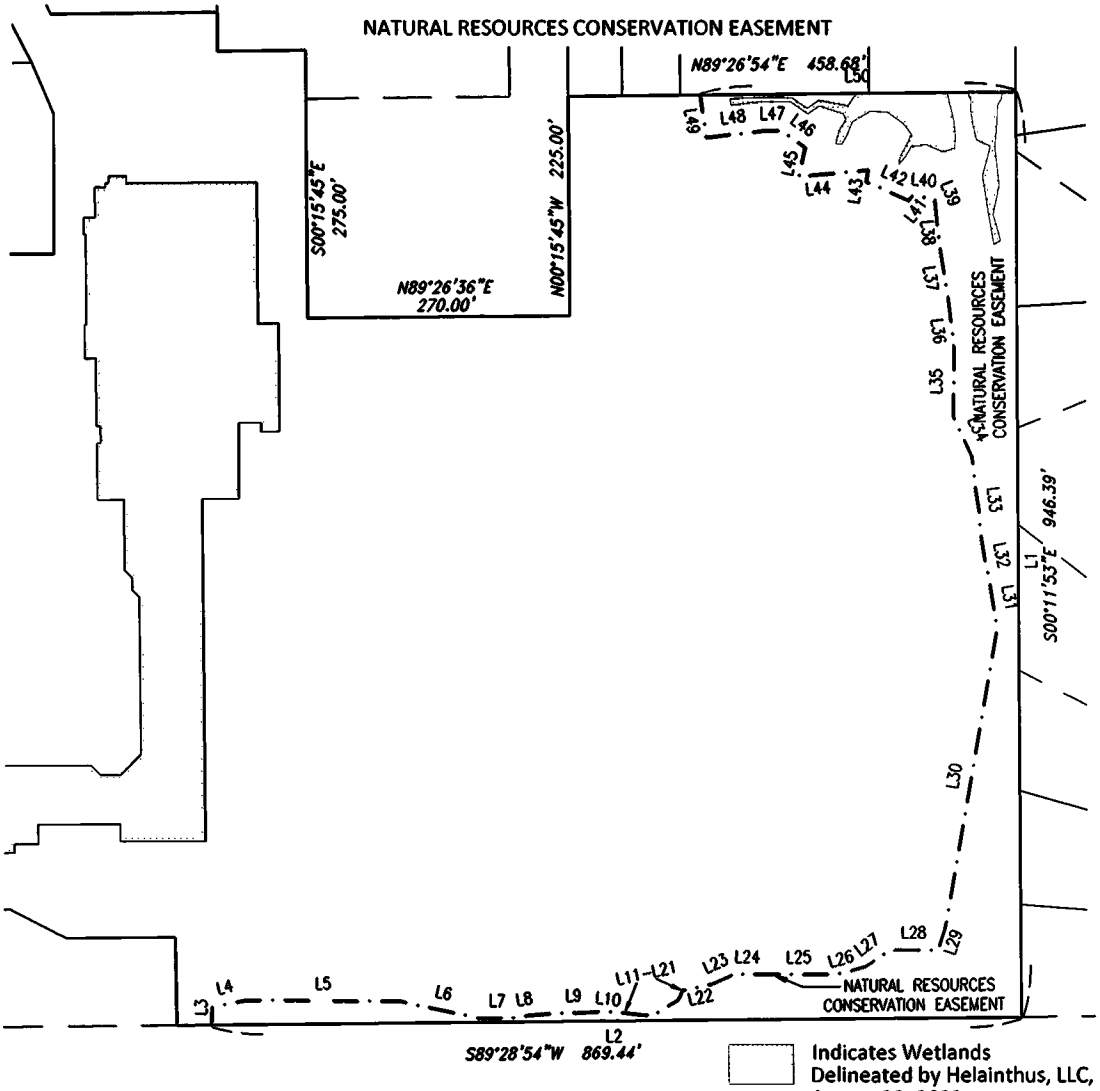

LINE TABLE

LINE	BEARING	DISTANCE
L1	S00°11'53"E	946.39'
L2	S89°28'54"W	833.29'
L3	N02°06'55"E	17.61'
L4	N77°24'55"E	35.19'
L5	S89°23'44"E	160.28'
L6	S77°41'28"E	81.87'
L7	N89°00'23"E	38.37'
L8	N81°11'19"E	22.84'
L9	N87°56'01"E	74.48'
L10	S83°51'54"E	14.67'
L11	S85°17'38"E	10.99'
L12	S83°27'42"E	6.94'
L13	S85°06'25"E	6.16'
L14	S89°55'06"E	6.19'
L15	N56°18'20"E	8.12'
L16	N58°00'42"E	20.48'
L17	N40°53'32"E	1.30'

LINE TABLE

LINE	BEARING	DISTANCE
L18	N34°02'44"E	3.26'
L19	N27°38'45"E	3.03'
L20	N22°46'59"E	1.67'
L21	N19°03'31"E	1.99'
L22	N77°49'29"E	31.06'
L23	N65°32'46"E	25.11'
L24	S89°16'35"E	28.16'
L25	S89°55'53"E	77.76'
L26	N75°09'04"E	30.15'
L27	N54°44'34"E	29.83'
L28	N90°00'00"E	50.76'
L29	N17°59'07"E	21.59'
L30	N10°06'45"E	311.74'
L31	N09°28'36"W	60.14'
L32	N11°25'41"W	24.43'
L33	N06°35'44"W	93.43'
L34	N25°23'13"W	43.95'

LINE TABLE

LINE	BEARING	DISTANCE
L35	N00°15'27"E	73.99'
L36	N06°30'54"W	45.23'
L37	N09°06'02"W	61.77'
L38	N05°34'33"W	42.06'
L39	N21°22'55"W	2.91'
L40	N84°53'09"W	23.11'
L41	S36°53'59"W	5.25'
L42	N65°54'40"W	46.57'
L43	N08°31'03"E	12.10'
L44	S84°35'25"W	71.16'
L45	N12°19'58"E	30.31'
L46	N54°20'44"W	30.42'
L47	S89°41'12"W	17.32'
L48	S83°23'52"W	59.94'
L49	N07°55'27"W	44.32'
L50	N89°26'54"E	323.10'

Graphic Scale

0 150 300

1" = 150'

WISCONSIN
DONALD C CHAPUT
S-1316
MILWAUKEE
WI
LAND SURVEYOR

Date June 7, 2023
Revised December 4, 2023
Sheet 4 of 8 Sheets
Survey No 4192 02-lpm

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Professional Land Surveyor S-1316

CERTIFIED SURVEY MAP NO._____

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All bearings are referenced to the Wisconsin State Plane Coordinate System (South zone) NAD83, in which the North line of the NW 1/4, Section 10, Township 5 North, Range 21 East bears N89°26'54"E

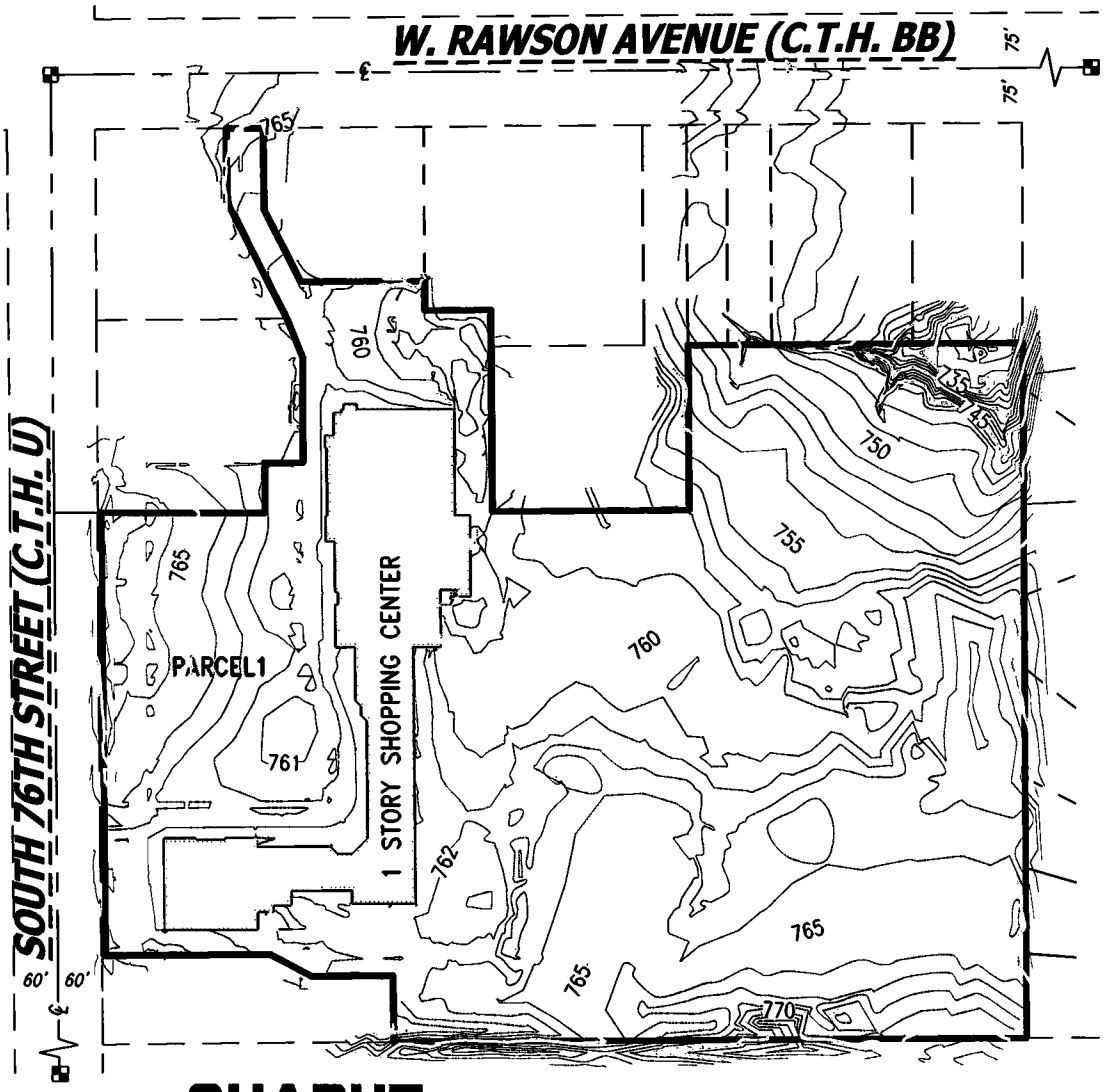
Vertical datum is based on North American Vertical Datum of 1988 (12)

Note: Existing contours are shown

WISCONSIN
DONALD C CHAPUT
S-1316
MILWAUKEE WI
LAND SURVEYOR

0 200 400

Graphic Scale 1" = 200'



CHAPUT
LAND SURVEYS
234 W Florida Street Milwaukee WI 53204
414-224-8068 www.chaputlandsurveys.com

This instrument was drafted by Donald C Chaput Professional Land Surveyor S-1316

Date June 15, 2023
Revised. December 4, 2023
Sheet 5 of 8 Sheets
Survey No 4192 02-lpm

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All bearings are referenced to the Wisconsin State Plane Coordinate System (South zone) NAD83, in which the North line of the NW 1/4, Section 10, Township 5 North, Range 21 East bears N89°26'54"E

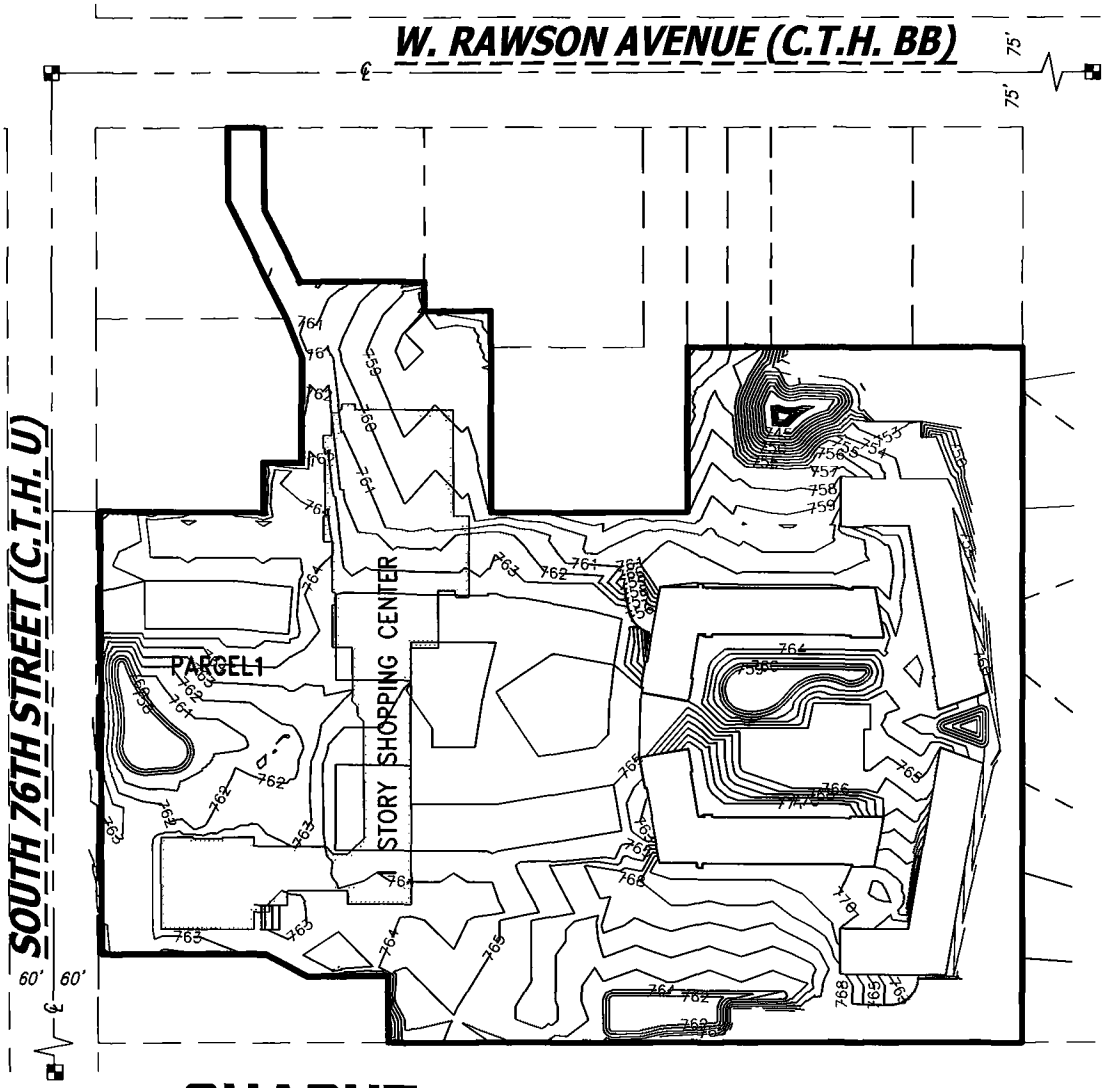
Vertical datum is based on North American Vertical Datum of 1988 (12)

Note Proposed contours shown were provided by The Sigma Group Inc Received November 27, 2023

WISCONSIN
DONALD C CHAPUT
S-1316
MILWAUKEE
WI
LAND SURVEYOR

0 200 400

Graphic Scale 1" = 200'



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SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN}
SS
MILWAUKEE COUNTY}

I, DONALD C. CHAPUT, Professional Land Surveyor, do hereby certify

THAT I have surveyed and mapped a redivision of Lot 2, Certified Survey Map No. 8318, Outlot 1 of Certified Survey Map No 6313, and Outlot 1 of Certified Survey Map No 5401 and lands all being part of the Northwest 1/4 of the Northwest 1/4 of Section 10, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, which is bounded and described as follows
Commencing at Northwest corner of said Northwest 1/4 of said Section 10, thence South 00°15'45" East along the West line of said Northwest 1/4 Section 596.70 feet to a point, thence North 89°59'53" East 60 00 feet to the East line of South 76th Street (C T.H U) and the point of beginning of lands described hereinafter, thence North 89°59'53" East along the South line of Lot 1 of Certified Survey Map No 8318 a distance of 228.57 feet to the East line of said Lot 1; thence North 00°00'07" West along said East line 68 60 feet to a point; thence North 89°59'53" East along said East line 52 02 feet to a point; thence North 00°00'07" West along said East line 144.04 feet to a point; thence North 22°40'40" West along said East line 56.53 feet to the Southeast corner of Parcel 3 of Certified Survey Map No. 4828, thence North 26°53'02" West along the East line of said Parcel 3 a distance of 178.51 feet to a point, thence North 00°15'45" West along said East line 100 00 feet to a point on the South line of West Rawson Avenue (C.T H BB); thence North 89°26'54" East along said South line 50 00 feet to the Northwest corner of Parcel 4 of Certified Survey Map No. 4828; thence South 00°15'45" East along the West line of said Parcel 4 a distance of 110.74 feet to a point, thence South 26°53'02" East along said West line 110.74 feet to the South line of said Parcel 4, thence North 89°26'36" East along said South line 169.93 feet to a point on the West line of Parcel 1 of Certified Survey Map No 5689, thence South 00°08'22" East along said West line 40.00 feet to the South line of said Parcel 4; thence North 89°26'36" East along said South line 90 53 feet to the West line of said Parcel 4, thence South 00°15'45" East along said West line 275 00 feet to the South line of Parcel 2 of Certified Survey Map No. 4483; thence North 89°26'36" East along said South line 270 00 feet to the East line of said Parcel 2, thence North 00°15'45" West along said East line 225.00 feet to the Southwest corner of Certified Survey Map No 6811; thence North 89°26'54" East along the South line of said Certified Survey Map 458 68 feet to the West line of Phase VII Westminster Condominiums, thence South 00°11'53" East along said West line and the West line of Dover Hill Addition No 1 Subdivision 946 39 feet to the North line of Carter Grove Condominium, thence South 89°28'54" West along said North line 869.44 feet to the Southeast corner of Parcel 1 of Certified Survey Map No 5401; thence North 00°31'06" West along the East line of said Parcel 1 a distance of 90 00 feet to the North line of said Parcel 1, thence South 89°28'54" West along said North line 111.56 feet to a point; thence North 62°22'32" West along said North line 63 59 feet to a point; thence South 89°28'54" West along said North line 230 00 feet to a point on the East line of South 76th Street (C.T H U), thence North 00°15'45" West along said East line 603 29 feet to the point of beginning.

Said lands as described contains 1,067,878 square feet or 24 5151 Acres

THAT I have made the survey, land division and map by the direction of Initech LLC, owner

THAT the map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made

THAT I have fully complied with Chapter 236 34 of the Wisconsin Statutes and the Subdivision Regulations of the City of Franklin Unified Development Ordinance Division 15 and Milwaukee County in surveying, dividing and mapping the same

June 7, 2023
DATE

WISCONSIN DONALD C CHAPUT S-1316 MILWAUKEE WI LAND SURVEYOR

DONALD C. CHAPUT
PROFESSIONAL LAND SURVEYOR S-1316

CHAPUT
LAND SURVEYS
234 W Florida Street Milwaukee, WI 53204
414-224-8068 www.chaputlandsurveys.com

This instrument was drafted by Donald C Chaput
Professional Land Surveyor S-1316

Date June 7, 2023
Revised· December 4, 2023
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CERTIFIED SURVEY MAP NO.

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OWNER'S CERTIFICATE

Initech LLC, do hereby certify that we caused the land described on this Certified Survey Map to be surveyed, divided, mapped and dedicated as represented on this map in accordance with the requirements of the City of Franklin

Initech LLC, as owner, does further certify that this map is required by S 236 20 or 236.12 to be submitted to the following for approval or objection City of Franklin, Milwaukee County

IN WITNESS WHEREOF, Initech LLC, owner, has caused these presents to be signed by the hand of _____, on this _____, day of _____, 2023.

Owner:
Initech LLC

_____

By: _____
WITNESS

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 2023, the above-named _____, as the _____, who executed the above instrument and acknowledged the same
TITLE

_____
Name _____
Notary Public, State of Wisconsin
My Commission _____

CITY OF FRANKLIN COMMON COUNCIL

APPROVED AND DEDICATION ACCEPTED BY THE COMMON COUNCIL OF THE CITY OF FRANKLIN BY RESOLUTION NO _____ SIGNED ON THIS _____ DAY OF _____, 2023

_____
JOHN NELSON, MAYOR

_____
KAREN KASTENSON, CITY CLERK

WISCONSIN
DONALD C
CHAPUT
S-1316
MILWAUKEE
WI
LAND SURVEYOR

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Professional Land Surveyor S-1316

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 06/17/2025
REPORTS & RECOMMENDATIONS	**Ordinance to amend Ordinance No. 2023-2546, an Ordinance creating Section 15-3.0447 of the Franklin Unified Development Ordinance establishing Planned Development District No. 42 (Poths General) (approximately 7154 South 76th Street)**	ITEM NUMBER G. 6. Ald. District #5

The applicant is requesting approval of a time extension for Planned Development District No. 42. The Poths General development consists of five multi-family residential apartment buildings, two mixed use buildings, a hotel, and the existing Harry's Ace Hardware and Rental store. The multi-family residential apartment buildings are projected to contain 430 apartments. The project also includes a 6,000 square foot clubhouse, which will contain the leasing center and management offices. In addition, there are numerous civic spaces and activities, such as an ice-skating rink, food truck plaza, pavilion, small amphitheater, splash pad, and dog park areas.

Ordinance No. 2023-2546 was approved at the July 5, 2023 Common Council meeting. The approval expires on July 5, 2025 without the issuance of a building permit.

This ordinance allows for a three-month extension, subject to Common Council approval (see below). The applicant is requesting this extension, which will require a building permit to be issued by October 5, 2025. Note that the applicant intends to return to the Plan Commission and Common Council with a PDD Amendment prior to the October 5th deadline. This amendment is anticipated to include building and site plan changes, a reduction in density, as well as an updated timeframe/expiration of approvals for the project.

> Expiration (Section 2(K)(8):
> In the event that no building permit has been issued for any one of the structures in this Planned Development District; prior to the expiration of 24 months from the date of enactment of this Ordinance, and allowing a three month extension thereto if requested by the applicant and approved by the Common Council prior to the expiration of the 24 months, the zoning designation shall revert back to the zoning for the subject parcel(s) which existed prior to the effective date of this Ordinance.

COUNCIL ACTION REQUESTED

A motion to approve Ordinance No. 2025-_____, to amend Ordinance No. 2023-2546, an Ordinance creating Section 15-3.0447 of the Franklin Unified Development Ordinance establishing Planned Development District No. 42 (Poths General) (approximately 7154 South 76th Street).

Planning NJF

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

[Draft 6-10-25]

ORDINANCE NO. 2025-____

AN ORDINANCE TO AMEND ORDINANCE NO. 2023-2546, AN ORDINANCE CREATING SECTION 15-3.0447 OF THE FRANKLIN UNIFIED DEVELOPMENT ORDINANCE ESTABLISHING PLANNED DEVELOPMENT DISTRICT NO. 42 (POTHS GENERAL) (APPROXIMATELY 7154 SOUTH 76TH STREET)

WHEREAS, Section 15-3.0447 of the Unified Development Ordinance provides for and regulates Planned Development District No. 42 (Poths General), same having been created by Ordinance No. 2023-2546 and later amended by Ordinance 2024-2576, with such District being located at approximately 7154 South 76th Street, bearing Tax Key Nos. 756-9993-021, 756-9993-016 and 756-9993-012; and

WHEREAS, Ordinance No. 2024-2546 provides at Section 2(K)(8) "[i]n the event that no building permit has been issued for any one of the structures in this Planned Development District; prior to the expiration of 24 months from the date of enactment of this Ordinance, and allowing a three month extension thereto if requested by the applicant and approved by the Common Council prior to the expiration of the 24 months, the zoning designation shall revert back to the zoning for the subject parcel(s) which existed prior to the effective date of this Ordinance."; and

WHEREAS, the Common Council having determined it fair and reasonable to provide a three-month extension to allow the applicant additional time to apply for and receive a Building Permit, as is allowed and contemplated by Ordinance No. 2024-2546; and

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Franklin, Wisconsin that Ordinance No. 2023-2546, an Ordinance creating Section 15-3.0447 of the Franklin Unified Development Ordinance establishing Planned Development District No. 42 (Poths General) located at approximately 7154 South 76th Street, bearing Tax Key Nos. 756-9993-021, 756-9993-016 and 756-9993-012, be amended to extend time for issuance of a Building Permit as required by Section 2(K)(8) to October 5, 2025.

BE IT FURTHER RESOLVED, that all terms and conditions of Ordinance No. 2023-2546 and Ordinance No. 2024-2576, not specifically and expressly amended by or in direct conflict with this Resolution, shall remain in full force and effect.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025, by Alderman _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025.

LAND
By
LABEL
DEVELOPMENT CO.

May 20, 2025

Nick Fuchs
City of Franklin
9229 W. Loomis Road
Franklin, WI 53132

Mr. Fuchs:

Land By Label on behalf of Initech LLC, the property owner of 7154 S 76th Street and adjacent parcels along Rawson Ave (tax key IDs 756-9993-021; 756-9993-016 and 756-9993-012), is formally requesting a 3-month extension of Ordinance No. 2023-2546 Poths General PDD 42 zoning designation pursuant to Section 2(K)(8). We are requesting that the extension apply to Resolution No. 2023-007 (Comprehensive Master Plan Change to Mixed Use) and Ordinance No. 2024-2576 (Amend PDD 42 Landscaping Requirements).

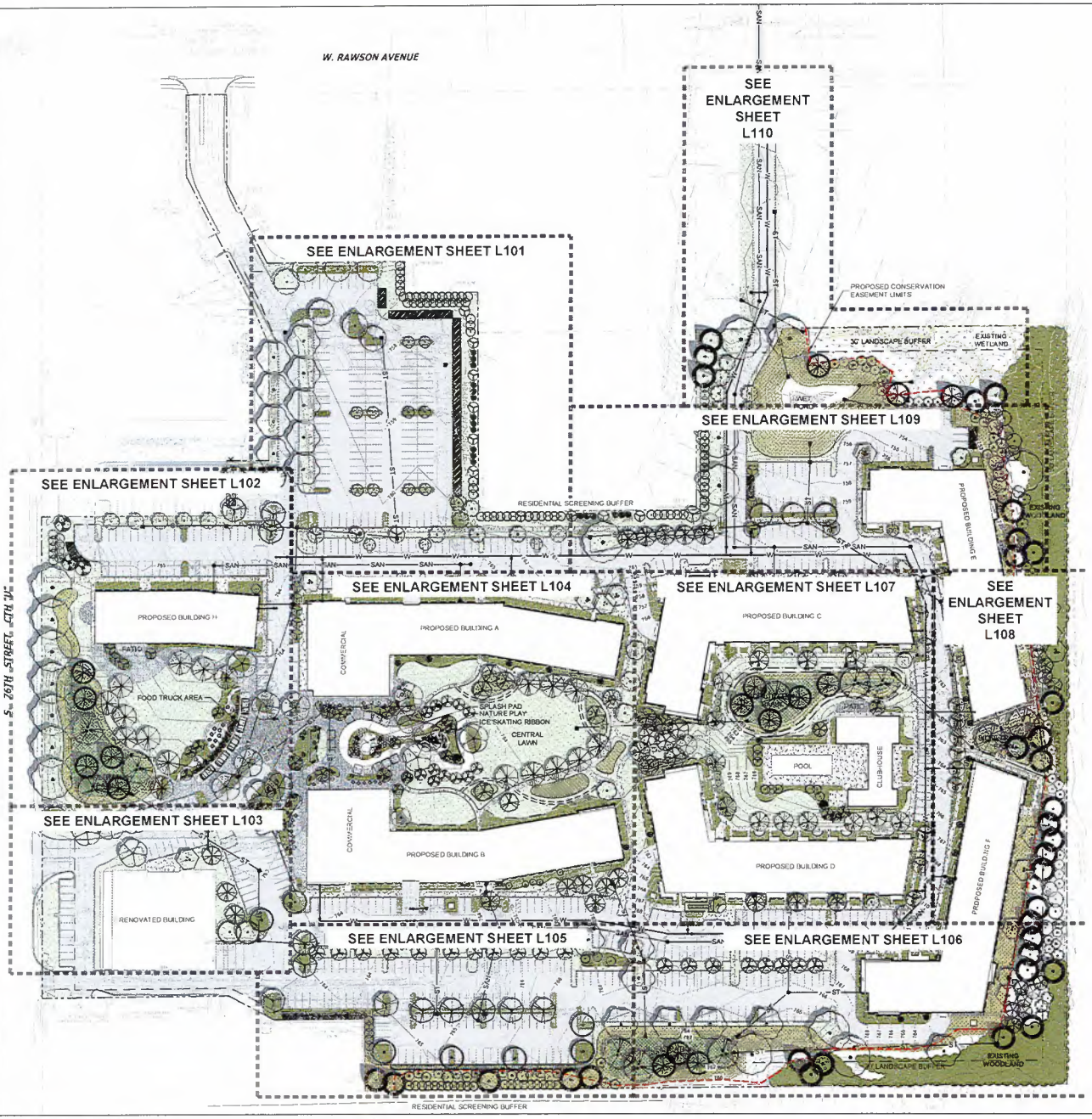
We respectfully request to be placed on the June 17, 2025 Common Council agenda for the extension request.

Please contact me with any questions.

Sincerely,

Emily Cialdini

VP Development
Land By Label
Landbylabel.com
Emily.c@landbylabel.com
(262) 305-2940



LANDSCAPE LEGEND

- TURFGRASS SEED
- HARDWOOD BARK MULCH PLANT BED
- STONE MULCH
- NATIVE SEED MIX
- BIOINFILTRATION PERENNIAL PLUGS
- SNOW STORAGE AREA
- EXISTING WOODLANDS (TO BE PRESERVED)
- EXISTING WETLAND (TO BE PRESERVED)
- EXISTING WETLAND BUFFER (TO BE PRESERVED)
- MARKET TENT
- EXISTING TREE (TO BE PRESERVED)
- PROPERTY LINE
- METAL PLANT EDGING
- SHOVEL CUT PLANT EDGING
- SHEET MATCHLINE
- CONSERVATION EASEMENT LINE

City of Franklin RESIDENTIAL Landscape Requirements:			
Total Dwelling Units (D.U.) = 432			
Open Space Ratio (OSR) = 0.45			
Overall Type	**Minimum (City Standards)**	**Required**	**Proposed**
Trees Preserved (>8" Cal.)	N/A	N/A	53
Canopy/Shade Trees	1.5 / DU	648	105
Evergreen Trees	1 / DU	432	125
Decorative Trees	1 / DU	432	131
Shrubs	3 / DU	1,296	890
Ornamental Grasses	N/A	N/A	1,128

City of Franklin NON RESIDENTIAL Landscape Requirements:			
Total Parking Stalls = 300			
Landscape Surface Ratio (LSR) = 0.45			
Overall Type	**Minimum (City Standards)**	**Required**	**Proposed**
Canopy/Shade Trees	1 / 5 Stalls	60	122
Evergreen Trees	1 / 5 Stalls	60	135
Decorative Trees	1 / 5 Stalls	60	74
Shrubs	1 / 5 Stalls	60	634
Ornamental Grasses	N/A	N/A	625

LANDSCAPE GENERAL NOTES:

1. VERIFY EXISTING AND PROPOSED CONDITIONS, UTILITIES, PIPES, AND STRUCTURES, ETC. PRIOR TO BIDDING AND CONSTRUCTION.
2. INSPECT THE SITE PRIOR TO COMMENCING WORK, DOCUMENT IN WRITING AND PHOTOGRAPH EXISTING CONDITIONS WITHIN, AND IN AREAS ADJACENT TO THE LIMITS OF CONSTRUCTION. THE LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGES NOT DOCUMENTED IN THE PHOTOGRAPHS PRIOR TO COMMENCEMENT OF DEMOLITION ACTIVITIES.
3. COORDINATE THE INSTALLATION OF PLANT MATERIAL WITH INSTALLATION OF ADJACENT PAVEMENTS, DRAINAGE, CURB RELATED STRUCTURES WITH OTHER TRADES.
4. RESTORE AREAS OF THE SITE, OR ADJACENT AREAS, WHERE DISTURBED, DAMAGE CAUSED DURING LANDSCAPE INSTALLATION TO EXISTING CONDITIONS AND IMPROVEMENTS IS THE RESPONSIBILITY OF THE LANDSCAPE CONTRACTOR.
5. CONTRACTOR SHALL THOROUGHLY REVIEW ALL SPECIFICATIONS RELATED TO TREE PROTECTION, SOIL PREPARATION, TURF, GRASSES AND PLANTS. THESE SECTIONS PROVIDE ADDITIONAL INFORMATION ON MATERIALS AND SET STANDARDS FOR QUALITY AND INSTALLATION REQUIREMENTS.
8. PROVIDE 3" DOUBLE SHREDDED BARK MULCH FOR ALL PLANTED TREES, SHRUBS AND LANDSCAPE BEDS.

THE SIGMA GROUP
Single Source Sound Solutions
www.thesigmagroup.com
1300 West Canal Street
Milwaukee, WI 53233
Phone: 414-643-4200
Fax: 414-643-4210

7044 South Ballpark Drive Suite 305
Franklin, WI 53132
Phone: 414-285-3470

GRAPHIC SCALE
0 60 120

POTHS GENERAL DEVELOPMENT
76TH AND RAWSON
FRANKLIN, WI 53132

OVERALL LANDSCAPE PLAN

PRELIMINARY NOT FOR CONSTRUCTION

ISSUANCE	DATE
PLAN COMMISSION SUBMITTAL	12/11/23

NO.	REVISION	DATE

SCALE	1" = 60'
PROJECT NO	21775
DESIGN DATE	---
PLOT DATE	2023.12.11
DRAWN BY	HLY
CHECKED BY	JL
APPROVED BY	CJC
SHEET NO	L100

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 6/17/2025
REPORTS & RECOMMENDATIONS	**A Resolution Authorizing the Director of Administration to Execute a Statement of Work with TransUnion for Cyber Security Incident Notification and Identity Protection Services**	ITEM NUMBER G. 7.

Background:

On August 15, 2024, the City of Franklin incurred a cyber security incident that involved an unauthorized person gaining access to the internal network from the remote access VPN, which then involved data being exfiltrated from the CH-FILE-01 file server. Rapid 7 was quickly able to identify the security event and alert IT to the ongoing data exfiltration. Rapid 7 logs indicated that approximately 53.91 GB of data was transferred from the internal network up to a file sharing service in Canada. The file transfer was able to be abruptly terminated and some data artifacts were recovered on the scripts that were used to perform the transfers.

Tokio Marine is the main cyber insurance provider for the City. The insurance company contracted with Lewis Brisbois, a legal advisor with deep experience in cyber security events who acted in the capacity of project manager and vendor coordinator. Tokio Marine and Lewis Brisbois contracted with Surefire Cyber LLC for post-mortem analysis of the event and engage in data forensics. Based on the available data artifacts, the vendor was unable to determine exactly what files had been transferred to the file sharing service, although the method of how the transfer occurred was well understood. It was confirmed that only data on the CH-FILE-01 server at City Hall was compromised.

On November 12, 2024, Haystack LLC was contracted by Lewis Brisbois to determine how many files potentially contained Personally Identifiable Information (PII), Sensitive Personally Identifiable Information (SPII), or Financial Personally Identifiable Information (FPII) with the file archives on the CH-FILE-01 server. Over 2,958 GB of data had to be interrogated to determine if any of the forms of PII existed within the documents that could potentially compromise an individual or organization's security. Many of the documents were PDF that contained photocopied image scans (pictures) and needed to be fully Optical Character Recognized (OCR) before the text within the documents could be read. The lack of OCR being consistently used for decades dramatically slowed down the data analysis.

Recommendation:

Haystack LLC performed data conversion, mining, categorization, and analysis of approximately 3TB of data. In many cases, context of the file could only be determined by file and folder structure, instead of documents being tagged or meta data being included within the document. The lack of tagging made determining the specific individuals or businesses involved within a document to be quite challenging. Context was based on the contents of the document and the folder structures. Haystack completed the data analysis on May 19, 2025.

It is recommended that 13,666 notification letters be sent to individuals who may have had SPII or FPII compromised. Since the exact file digest that was exfiltrated is not known, it has to be assumed that any file on the server could have been involved in the security incident. Notification does not presume that the files were actually exfiltrated.

Lewis Brisbois is recommending that TransUnion be contracted to send out all notification letters, with a draft of the letter and corresponding FAQ being provided. TransUnion will also subscribe individuals seeking a remedy to free credit monitoring services, which is being provided to the City at zero cost through Tokio Marine. This will be considered the last phase of the cyber security incident analysis and response.

Fiscal Impact:

All costs associated with the sending and distribution of the notification letter will be covered under the City's current cyber security insurance with Tokio Marine. All costs associated with the offering of cyber insurance to the identified 13,666 individuals is being provided by Tokio Marine.

COUNCIL ACTION REQUESTED

Motion to adopt Resolution No. 2025-____, A Resolution Authorizing the Director of Administration to Execute a Statement of Work with TransUnion for Cyber Security Incident Notification and Identity Protection Services.

IT-JM

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2025-____

A RESOLUTION AUTHORIZING THE DIRECTOR OF ADMINISTRATION TO EXECUTE A STATEMENT OF WORK WITH TRANSUNION FOR CYBER SECURITY INCIDENT NOTIFICATION AND IDENTITY PROTECTION SERVICES

WHEREAS, on August 15, 2024, the City of Franklin experienced a cybersecurity incident resulting in unauthorized access to the City's internal network and the exfiltration of approximately 53.91 GB of data from a file server at City Hall;

WHEREAS, the City's cyber liability insurance provider, Tokio Marine, in coordination with legal and forensic consultants, confirmed that data potentially containing personally identifiable information (PII), sensitive PII (SPII), or financial PII was compromised;

WHEREAS, forensic analysis identified approximately 13,666 individuals whose data may have been affected by the breach;

WHEREAS, to fulfill its legal obligations and uphold its commitment to transparency and protection of affected individuals, the City has determined it necessary to notify impacted individuals and offer identity protection services;

WHEREAS, TransUnion has provided a proposal for notification and credit monitoring services, including mailing notices and providing one year of identity protection coverage;

WHEREAS, the estimated cost for these services is between $35,000 and $45,000, and will be paid using available funds under the City's cyber insurance policy or other applicable funding sources;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Franklin, Wisconsin, that:

1. The Director of Administration is hereby authorized to execute the Statement of Work with TransUnion for the provision of data breach notification and identity protection services, substantially in the form presented to the Common Council, and to take such additional administrative actions as may be necessary to implement the services described therein.

2. The funding for said services shall be drawn from available cyber insurance coverage and/or other funds as determined appropriate by the Director of Finance and Treasurer.

Introduced at a regular meeting of the Common Council of the City of Franklin on this 17th day of June 2025.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin on this 17th day of June 2025.

APPROVED:

_____
John R. Nelson, Mayor

ATTEST:

_____
Shirley J. Roberts, City Clerk

AYES ____ NOES ____ ABSENT ____

This Master Services Agreement ("Agreement") is entered into Sontiq, Inc a Delaware limited liability company with its principal offices at 9920 Franklin Square Drive, Unit 250, Nottingham, MD 21236 ("CyberScout"), and Lewis Brisbois Bisgaard & Smith LLP of 1700 Lincoln St , Suite 4000, Denver, CO 80203 ("Law Firm"), who hereby engages CyberScout on behalf of Law Firm's client as identified below ("Company"), effective as of the date indicated below ("Effective Date") CyberScout and Company each may be referred to as a "Party" and collectively as the "Parties "

City of Franklin
Name of Company

9229 W Loomis Rd
Franklin, WI 53132
Principal Office Address

6/4/2025
Effective Date

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants, conditions, understandings, and agreements herein, the receipt and sufficiency of which is acknowledged, the Parties agree as follows

1. PROVISION OF SERVICES

During the term of this Agreement, CyberScout shall provide each service as described separately in each statement of work ("SOW") mutually agreed to by the Parties (the "Services") Each executed SOW shall be attached hereto and is incorporated by reference CyberScout shall provide the Services to Company solely for the benefit of Company's Customers as defined or identified in the applicable SOW and shall have no contractual obligations to the Customer unless a Customer has separately contracted with CyberScout

2. FEES AND PAYMENT

Company agrees to pay CyberScout the fees applicable to each SOW as set forth in the executed SOW Company will be responsible for all taxes, fees or charges levied or assessed by any governmental authority or agency based upon the charges under this Agreement or the Services, except taxes levied or assessed on the net income or profit of CyberScout, if any Company shall be solely responsible for all financial obligations to CyberScout in connection with this Agreement

3. TERM AND TERMINATION

3 1 *Term* The Agreement will begin on the Effective Date and will continue in effect until otherwise terminated in accordance with Section 3 2 below

3 2 *Termination* Either Party may terminate this Agreement and any SOW (a) immediately in the event of a material breach of this Agreement or any such SOW by the other Party that is not cured within thirty days of written notice by the other Party specifying the default (or, in the case of Company's failure to pay any amount due, within ten days of written notice), or (b) immediately in the event of the other Party's bankruptcy, insolvency, liquidation, or cessation of business Either Party may also terminate this Agreement upon thirty days' written notice to the other Party for any reason if there are no SOWs then currently in effect Upon termination of this Agreement for any reason, all outstanding SOWs shall immediately terminate Except as expressly provided herein, termination of this Agreement or any SOW is a nonexclusive remedy for breach All rights and obligations accrued prior to termination will survive termination

3 3 *Post Termination Obligations* Upon termination or expiration of this Agreement and all SOWs, CyberScout and Company will each, within thirty days, return to the other party or destroy all copies of the other's Confidential Information and will certify, in writing, delivery or destruction of all such Confidential Information and copies thereof However, a party shall not be required to search for information stored in backup tapes or similar backup media if the information will be destroyed in the ordinary course pursuant to a commercially reasonable schedule and any such stored information is treated as Confidential Information until it is destroyed

4. CONFIDENTIALITY

4 1 *Confidential Information* Each Party will regard any information provided to it by the other Party and designated in writing as proprietary or confidential to be confidential ("Confidential Information") Confidential Information shall also include information that would otherwise be understood by a reasonable person to be confidential or proprietary given the nature of the information and/or the manner in which it is disclosed The receiving Party shall not disclose Confidential Information to any person or entity *except* to a director, officer, employee, outside consultant, third party service provider, or advisor (collectively "Representatives") who have a need to know such Confidential Information in the course of their duties for the receiving Party and who are bound by a duty of confidentiality no less protective of the disclosing Party's Confidential Information than this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used The Parties agree that the terms and pricing of this Agreement are Confidential Information A receiving Party shall promptly notify the disclosing Party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with the disclosing Party in enforcing its rights

4 2 *Exclusions* Information will not be deemed Confidential Information hereunder if it (i) is known prior to receipt from the disclosing Party, without any obligation of confidentiality, (ii) becomes known to the receiving Party from a source other

than one having an obligation of confidentiality to the disclosing Party, (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement, or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information The receiving Party may disclose Confidential Information to the extent required by applicable law, legal process or government regulation, provided that it gives the disclosing Party reasonable prior written notice to permit the disclosing Party to contest such disclosure

5. OWNERSHIP RIGHTS

5 1 *Company* Company retains ownership of all right, title, and interest in any information, data, and materials provided by Company to CyberScout in connection with this Agreement ("Company Materials") and all of Company's logos and trademarks Company hereby grants to CyberScout a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 11 2), right to use and display the Company Materials, logos and trademarks solely as necessary to provide the Services

5 2 *CyberScout* As between Company and CyberScout, all right, title, and interest in the Services and any trade secrets, know-how, processes, or works of authorship incorporated into the Services or otherwise made available to Company by CyberScout in the course of providing the Services ("CyberScout Materials") are and shall remain CyberScout's or its licensors' The CyberScout name, all CyberScout logos, and the product names associated with the Services are trademarks of CyberScout or third parties, and no right or license is granted to use them

5 3 Neither party shall take any action inconsistent with the other party's ownership of such other party's (or its licensors') logos and trademarks, and any benefits accruing from the use of a party's or its licensors' logos or trademarks shall automatically vest in the owner

6. PERSONAL INFORMATION / DATA SECURITY

6 1 *Compliance with Laws* Both parties agree to comply with all applicable laws and regulations regarding privacy and protection of personal information ("Privacy Laws") If necessary to comply with Privacy Laws, CyberScout may suspend or cease providing Services and shall not be deemed to be in breach as a result

6 2 *Use of Information* CyberScout collects, stores and uses personal details of Customers in accordance with CyberScout's privacy notice that is located at cyberscout com/privacy policy, as amended from time to time CyberScout assumes no responsibility for the use of any such information by any third party (such as a third-party supplier of credit or fraud monitoring products) if and to the extent the information is provided directly to the third party by a Customer

6 3 *Safeguarding Information Provided by Customer* CyberScout shall take commercially reasonable steps to safeguard non public personal information provided by Customers to CyberScout, including encrypting with at least 128-bit encryption any such information that CyberScout stores electronically

6 4 *Breach Incident* CyberScout will promptly notify Company of any security breach that results in unauthorized intrusion of CyberScout's physical location or storage facilities, including computerized data storage facilities, that may affect Customers Such notification shall include a summary of the intrusion, CyberScout's corrective action, and the information that may have been obtained CyberScout and Company shall comply with any notification requirements under applicable law and cooperate with any law enforcement investigations

7. REPRESENTATIONS AND WARRANTIES

7 1 CyberScout and Company each hereby represents to the other that this Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation, and that its execution and performance of this Agreement does not violate or constitute a default under (i) any law, statute, ordinance, rule, regulation, judgment or decree applicable to it, or (ii) the terms of any other agreement, document or instrument applicable to it

7 2 If Company is entering into this Agreement or any SOW on behalf of, or to procure services for, an affiliate or client of Company, Company represents and warrants that it has authority to do so and that Company's entry into the Agreement and/or SOW thereby binds such affiliate or client to the terms thereof

8. INDEMNIFICATION

8 1 Each Party (the "Indemnifying Party") will indemnify, defend, and hold harmless the other Party, its parents, subsidiaries, affiliates, directors, officers, employees, agents and subcontractors (any such Party seeking indemnification, the "Indemnified Party") from and against any bona fide legal claim against the Indemnified Party made by any Customer or other third party arising out of the gross negligence or willful misconduct of the Indemnifying Party in connection with this Agreement, any of which is hereinafter referred to as a "Claim "

8 2 The indemnification obligations under this Section 8 are subject to the Indemnified Party (i) promptly notifying the Indemnifying Party of the Claim, (ii) permitting the Indemnifying Party to assume sole control of the defense and settlement of such Claim (but the Indemnified Party will have the right to participate in the defense or settlement at its sole cost and expense), and (iii) providing the Indemnifying Party with all reasonable assistance in connection with defending or settling any such Claim The Indemnifying Party shall not settle any Claim in a manner adverse to the Indemnified Party without the prior written approval of the Indemnified Party

9. LIMITATION OF LIABILITY

9 1 *Consequential Damage Exclusion* Neither Party shall be liable to the other or to any third party for loss of profits or for any special, indirect, incidental, consequential or punitive damages in connection with this Agreement, whether arising by statute, contract, tort, or otherwise, even if it is aware of the possibility of the occurrence of such damages

9 2 *Limitation of Liability* Except for a Party's breach of Section 4 or its willful misconduct, and excluding Company's payment obligations under this Agreement, the total cumulative liability of each Party for any and all claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed the fees paid by Company to CyberScout hereunder during the twelve (12)

month period immediately preceding the event giving rise to the claim

9 3 Nothing in this Section 9 is intended to limit a Party's liability for fraudulent conduct or for death or personal injury caused by its negligence

10. DISCLAIMERS OF WARRANTIES

THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, CYBERSCOUT EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE CYBERSCOUT MAKES NO WARRANTY THAT (i) PAST IDENTITY FRAUD WILL BE RESOLVED, IN WHOLE OR IN PART, OR THAT (ii) FUTURE IDENTITY FRAUD WILL BE PREVENTED

11. GENERAL

11 1 *Entire Agreement* This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, representations, and communications (written or oral) between the Parties relating thereto

11 2 *Assignment* Company may not assign or delegate any of its rights or obligations under this Agreement without the written consent of CyberScout, which may not be unreasonably withheld CyberScout may assign this Agreement and all SOWs as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets, shares, or business to which this Agreement relates Any attempted assignment or delegation that is not permitted by this Agreement will be void

11 3 *Affiliates, Subcontractors* CyberScout may in its discretion provide Services through one or more of its international Affiliates "Affiliate" means a parent, sister, or subsidiary company CyberScout may also utilize third-party subcontractors in its discretion to provide additional working capacity, availability, and/or specialized capabilities that may be called for under the circumstances At all times, CyberScout shall remain responsible for all aspects of the Services Company acknowledges that if the Services include a credit report and/or or credit or identity monitoring, the monitoring is obtained from a third party vendor

11 4 *Continuation of Services* CyberScout may offer Customers the option to continue receiving Services (or similar services) at their own cost following the conclusion of Services under this Agreement With respect to such follow-on services that a Customer may elect to receive at their own cost, the Customer will become a CyberScout customer pursuant to a separate agreement with CyberScout, and CyberScout shall have no reporting or other obligations to Company

11 5 *Relationship of the Parties* CyberScout and Company are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating a relationship of employer and employee, master and servant, or principal and agent between them, for any purpose

11 6 *Notices* All notices provided for hereunder shall be in writing and shall be deemed given (i) when delivered on a business day if delivered personally during normal business hours at the place of receipt, (ii) on the next business day after deposit with any overnight courier for next business day delivery, if such date is a business day at the offices of the addressee, or (iii) the date of receipt if delivered by certified mail, return receipt requested, postage prepaid "Business day" is defined as any day other than Saturdays, Sundays, and statutory holidays in the relevant jurisdiction Notices shall be addressed as follows or to such other address as a Party may specify in accordance with this Section 11 6

If to CyberScout

Sontiq, Inc (Attn CEO)
9920 Franklin Square Drive, Unit 250
Nottingham, MD 21236

**With a copy to*

Sontiq, Inc (Attn EVP Operations)
9920 Franklin Square Drive, Unit 250
Nottingham, MD 21236

If to Company To the attention of Company's signatory to this Agreement at the address set forth in the preamble above

11 7 *Governing Law and Dispute Resolution* This Agreement and any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflicts of laws provisions The parties irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts located in New Castle County, Delaware for all such disputes or claims

11 8 *Cooperation in the Event of Investigation* CyberScout agrees to assist and support Company in the event of an investigation by law enforcement or similar authorities, as such investigation relates to the services provided, or information collected or received, under this Agreement Company will reimburse CyberScout for any reasonable, pre approved out-of-pocket costs incurred in the course of complying with this section, but Company shall have no such reimbursement obligation if CyberScout or its actions are a principal subject of the investigation

11 9 No Party shall be deemed to have waived any of its rights, powers or remedies hereunder, or to have waived any condition precedent, unless such waiver is embodied in a writing executed by such Party which explicitly sets forth the Party's intent to waive the matter in question

11 10 *Counterparts* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument Signatures to this Agreement or any SOW transmitted by facsimile, by electronic mail in "portable document format" (" pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature and shall for all purposes be treated as original

Executed and delivered by the parties' authorized representatives on the last date indicated below

Lewis Brisbois Bisgaard & Smith LLP

Signature of Authorized Representative

Print Name of Signer

Print Title of Signer

Date Signed

Sontiq, Inc

Signature of Authorized Representative

Print Name of Signer

Print Title of Signer

Date Signed

CyberScout Use Only

Contract No.

City of Franklin

Signature of Authorized Officer

Print Name of Signer

Print Title of Signer

Date Signed

This statement of work, including all exhibits attached hereto (the "SOW"), is entered into between Sontiq, Inc a Delaware limited liability company with its principal offices at 9920 Franklin Square Drive, Unit 250, Nottingham, MD 21236 ("CyberScout"), and Lewis Brisbois Bisgaard & Smith LLP of 1700 Lincoln St , Suite 4000, Denver, CO 80203 ("Law Firm"), who hereby engages CyberScout on behalf of Law Firm's client as identified below ("Company"), effective as of the date indicated below ("Effective Date")

City of Franklin
Name of Company

6/4/2025
Effective Date

This SOW is subject to the Master Services Agreement executed contemporaneously herewith (the "MSA") Defined terms not otherwise defined herein shall have the meaning accorded to such terms in the MSA In the event of a conflict between the terms of this SOW and the MSA, the MSA shall control unless expressly otherwise agreed herein

1. DEFINITIONS

1 1 *"Notification Recipients"* means those individuals receiving a notification that they were possibly affected by a breach incident due to exposure of information owned or controlled by Company

1 2 *"Usage-Based"* refers to a fee that is charged according to the number or quantity of services provided, including, for example, those based on the number of telephone calls received, number of enrollments, or number of letters mailed

1 3 *"Population Based"* refers to a fee that is calculated and charged up-front based on a specified number of Notification Recipients/individuals to be covered by the services If the services are thereafter to be extended to additional individuals, an additional Population-Based fee will apply

2. BREACH SERVICES

Subject to the terms and conditions set forth herein, including payment of the applicable fees, CyberScout shall provide to Company those Breach Services set forth in this SOW Exhibit A describes the available Breach Services and Exhibit B indicates the specific Breach Services to be provided under this SOW and the applicable fees

3. TERM

This SOW will commence on the Effective Date and will continue in effect until the conclusion of the Service Period indicated in Exhibit B, unless earlier terminated or extended in accordance with the terms of this Agreement

4. FEES

4 1 *Upfront Fees* Within ten days of the Effective Date, without requiring any invoice or additional action by CyberScout, Company shall pay CyberScout (a) all Set up Fees set forth in Exhibit B and (b) the Total Population-Based Fee, if any, set forth in Exhibit B, according to the payment instructions set forth in Exhibit C Company shall also submit the additional required documents specified in Exhibit C, if any, concurrently with making payment If the fees and additional required documents referred to in this Section 4 1 are not received within ten days after the Effective Date, CyberScout may, in its sole discretion, immediately terminate this SOW by giving written notice to Company

4 2 *Usage-Based Fees* The Usage-Based Fees, if any, set forth in Exhibit B shall be invoiced monthly in arrears based on the services provided and fees incurred in the previous month Company shall pay the Usage-Based Fees within ten days of the date CyberScout's invoice is forwarded to Company

5. INVOICING AND PAYMENT

5 1 CyberScout shall forward all invoices to the address of Company set forth in the MSA, and all such invoices are due and payable by Company within ten (10) days of the date each such invoice is forwarded to Company The fees referred to in Section 4 1 of this SOW are payable in accordance with Section 4 1 and shall not require an invoice All fees are exclusive of any applicable value-added tax

5 2 Any payment not received by the due date, at the discretion of CyberScout, may be subject to a late fee of up to 1 5% of the outstanding amount per month

6. SERVICE HANDLING

Company shall refer each Notification Recipient to CyberScout in the following manner

For any Call Handling Services, Proactive Fraud Assistance, and ID Fraud and Theft Resolution Services included in this SOW, Notification Recipients will need to call CyberScout at a telephone number to be provided by CyberScout Notification Recipients must reference their unique identifiers ("Codes") in order for CyberScout to verify their eligibility and provide service CyberScout shall have no further obligation to verify an individual's identity

For any Remediation Product Option included in this SOW, Notification Recipients will need to sign up and enter their Code at a secure URL to be provided by CyberScout The enrollment period is limited to ninety (90) days

The Codes will be generated and provided to Company by CyberScout Alternatively, if agreed upon by the parties, Company will generate the Codes and in such case will provide, by secure file transfer, a spreadsheet of the Notification Recipients and associated Codes, which shall not contain any Personal Information

With the exception of any agreed upon Notification Services to be provided by CyberScout under this SOW, Company shall distribute the Codes to Notification Recipients in Company's sole discretion and shall be solely responsible for the drafting, preparation, printing and sending of notification letters/messages to affected Notification Recipients, and all

costs associated therewith Any descriptions of CyberScout's products or services shall use wording provided by CyberScout or approved in advance in writing by CyberScout If the Breach Services include a Remediation Product Option that includes Expense Reimbursement, Company acknowledges that the notification must include a copy of the Summary Description of Benefits

7. LANGUAGE SUPPORT

CyberScout's Services are provided primarily in the English language Where necessary, CyberScout can support additional languages using a third-party translation service or in-house capability Company acknowledges that third party translation may not be a suitable option depending on the details of the breach

8. ADDITIONAL TERMS APPLICABLE TO ADDRESS SERVICE

With respect to any "Address Append" services to be provided under this SOW (if applicable), and notwithstanding any contrary provision in the MSA

Company will submit to CyberScout, via secure means, a file containing the individuals' names and known addresses, or other acceptable data elements that may be agreed upon (e g , SSN) Company represents that the individuals whose information is disclosed to CyberScout hereunder are United States residents/citizens Company is responsible for ensuring that the provision of the information to CyberScout does not violate any applicable law or regulation and that Company has obtained any necessary consents from the individuals

CyberScout will obtain mailing addresses, where available, for the individuals from a third party vendor (the "Address Vendor"), which will require CyberScout to disclose the file to the Address Vendor

Any mailing addresses or other contact information received from the Address Vendor will not be used by CyberScout or Company for any purpose other than the Notification Services, and both CyberScout and Company will otherwise hold the information in strict confidence Company will reasonably cooperate with CyberScout and the Address Vendor in the event the Address Vendor elects to audit the parties' compliance with this requirement In such event, any audit will occur on new fewer than five (5) business days' notice during normal business hours and will not entail access to any information other than (a) the actual information provided and the way(s) in which it has been used, and (b) the parties' security processes and procedures applicable to the handing of the information Any information disclosed by Company in connection with such an audit will be maintained as confidential

Any Address Vendor used in connection with this service is not bound by the terms of the MSA and, specifically, may not comply with the provisions of Sections 4 1 and 6 3 of the MSA CyberScout agrees to use its best efforts to secure the Address Vendor's contractual agreement to comply with all applicable federal and state laws, rules, and regulations relating to the performance of its services, including any privacy and data protection and security laws Notwithstanding the provisions of Section 4 1 of the MSA, CyberScout shall not be responsible for the Address Vendor's storage or use of the information disclosed to the Address Vendor in connection with the services set forth in this section, including, but not limited to any failure to safeguard such information

Company understands and agrees that any information furnished as part of the Address Append or Notification Services is obtained by and through fallible human sources and that for the fees charged, CyberScout and the Address Vendor cannot be an insurer of the accuracy of the information Company understands and agrees that the correctness, completeness, currentness, merchantability, or fitness for a particular purpose of any information furnished is not guaranteed Company releases CyberScout and the Address Vendor and their agents and employees from liability, even if caused by negligence, for any loss or injury arising out of or relating to (a) the accuracy or validity of the information, or (b) any acts or omissions in procuring, reporting or transmitting the information

(Signature Page Follows after Exhibits)

EXHIBIT A TO STATEMENT OF WORK

Notification Letters (Print and Mail) -- Provides print and mailing services as part of the notification to impacted parties Includes provision of notification letter template(s) and/or service enrollment document template(s) for use by Company and/or its legal counsel in structuring and developing their breach notification letter(s) Also includes management, handling, printing, and mailing of letters Final review and evaluation of letter design, formatting, content and compliance with applicable regulations and legal requirements regarding form and content of notification is the sole responsibility of Company

Notification: Address Append -- Based on information provided by the client, CyberScout obtains addresses for the impacted parties, to be used for purposes of sending the notification to impacted parties

Notification Letters (Alternate Format) -- As mutually agreed, CyberScout can assist with alternate forms of notification, which may include, for example, sending notice via e-mail or distributing press releases

Call Handling Services -- Provides scripted responses via FAQs from customer service representatives (CSRs) to impacted parties in compliance with notification laws Includes

- Initial call handling to answer questions surrounding notification letter/message or issues with product sign up (in cases where product is offered)
- Issues requiring escalation to the client are determined on a project basis, but typically include non-breach related questions or questions involving details not available to CSRs CyberScout is sensitive to clients' capacity to receive such calls and will attempt to resolve issues to a caller's satisfaction before escalating a complaint or question to the client CyberScout tracks reported issues and communicates them to the client in a weekly summary report

Proactive Fraud Assistance -- For sensitive breaches focused on customer retention, reputation management, or escalation handling, CyberScout provides unlimited access to a fraud specialist who will work with notification recipients on a one-on-one basis, answering any questions or concerns that they may have Includes

- Initial credit file activity review with TransUnion (United States only)
- Fraud specialist-assisted placement of fraud alert, protective registration, or geographical equivalent, in situations where it is warranted
- After placement of a Fraud Alert, a credit report from each of the three (3) credit bureaus is made available to the notification recipient (United States only)
- Assistance with reading and interpreting credit reports for any possible fraud indicators
- Removal from credit bureau marketing lists while Fraud Alert is active (United States only)
- Answering any questions individuals may have about fraud
- Provide individuals with the ability to receive electronic education and alerts through email (Note that these emails may not be specific to the recipient's jurisdiction/location)

Identity Theft and Fraud Resolution Services -- Resolution services for Notification Recipients who fall victim to an identity theft as a result of a breach activity Includes, but is not limited to

- Unlimited access to a personal fraud specialist via a custom toll-free number
- Creation of Fraud Victim affidavit or geographical equivalent, where applicable
- Preparation of all documents needed for credit grantor notification, and fraud information removal purposes
- All phone calls needed for credit grantor notification, and fraud information removal purposes
- Notification to any relevant government and private agencies

- Assistance with filing a law enforcement report
- Comprehensive case file creation for insurance and law enforcement
- Assistance with enrollment in applicable Identity Theft Passport Programs in states where it is available and in situations where it is warranted (United States only)
- Assistance with placement of credit file freezes in states where it is available and in situations where it is warranted (United States only)
- Customer service support for individuals when enrolling in optional monitoring products, if applicable
- Assistance with review of credit reports for possible fraudulent activity
- Unlimited access to educational fraud information and threat alerts (Note that these emails may not be specific to the recipient's jurisdiction/location)
- A full year of service, including follow-up calls

* Call Handling, Proactive Fraud Assistance, and ID Theft/Fraud Resolution Services, if provided under this SOW, shall be provided for ninety (90) days (the "Call-Handling Period") For avoidance of doubt, even if Exhibit B specifies a longer service period for this SOW, the Call-Handling Period shall remain ninety days unless Exhibit B specifically refers to extending the Call-Handling Period

Remediation Product Options

United States
Single-Bureau Credit Report (1BCR)
Single-Bureau Credit Monitoring (1BCM)
Triple-Bureau Credit Report (3BCR)
Triple-Bureau Credit Monitoring (3BCM)
Payday Monitoring (Payday)
Sex Offender Monitoring (Sex Offender)
Court Records Monitoring (Court Records)
Public Records Monitoring (Public Records)
Cyber Internet Surveillance (Dark Web / Cyber)
Identity Theft Expenses Insurance ($1,000,000) – see Summary Description of Benefits for details, cannot be provided as a stand-alone product

* All credit/identity monitoring products are delivered electronically over the Internet Identity Theft Expenses Insurance will be underwritten by certain underwriters at Lloyd's and the entitlements, limitations and restrictions will be as set forth in the insurance policy and its endorsements, which are summarized in the Summary Description of Benefits The aggregate limit of insurance may be described in currencies other than United States Dollars for communication purposes but such communications will make clear that the total amount that can be claimed will not exceed $1,000,000 USD

Consulting Services
Optional forensic consulting services are available under a separate statement of work at an hourly rate

EXHIBIT B TO STATEMENT OF WORK

The applicable Services and fees for this SOW are indicated in Table 1 (marked with ☒) If a Population Based Fee is indicated for any Services, refer to Table 2 for details

The service period is ninety days However, if the Services include a Remediation Product Option, the service period shall continue until 12 months after the last Product enrollment that occurs during the 90 day enrollment window described in Section 6 of this SOW

TABLE 1

Check if Included	Service	Fees		
☒	Notification – Mail • Includes 2 pages, front and back • Includes up to 4 different letter versions		$0 82 / letter	
☒	Additional letter versions beyond 4		$200 / version	
☒	Address Append (if needed)		$0 20 /per person	
☒	Data Cleansing and Manipulation		$150 / hour	
☒	90 Day Call Handling • FAQ • Toll-Free Number		$0 20 /per person	
☒	Adults • TransUnion Credit Monitoring, Report and Score • Identity Protection Services • Identity Resolution Services • $1,000,000 Identity Theft Insurance Minors/Deceased • Dark Web Monitoring • Identity Protection Services • Identity Resolution Services • $1,000,000 Identity Theft Insurance		**Redemption Rate** $4 00 / enrollment, 3 5% minimum *All options above include up to 5% of the population needed two-years of service at no additional charge	☐

EXHIBIT C TO STATEMENT OF WORK

Electronic Payments to CyberScout, LLC *** Please send ACH payment remittance to. clientaccounting@cyberscout com	
For Wire Transfers: To be provided	**For ACH delivery:** To be provided

Executed and delivered by the parties' authorized representatives on the last date indicated below

Lewis Brisbois Bisgaard & Smith LLP

Signature of Authorized Representative

Print Name of Signer

Print Title of Signer

Date Signed

Sontiq, Inc

Signature of Authorized Representative

Print Name of Signer

Print Title of Signer

Date Signed

City of Franklin

Signature of Authorized Officer

Print Name of Signer

Print Title of Signer

Date Signed

Total Population	Years of Service	Letter/Email Variations	Minors or Deceased	Non US Citizens
13,666	1	☒ 4 or less ☐ 5+	☒ No ☐ Yes	☒ No ☐ Yes

Service	Unit Rate	Total
Notification		
Notification – Print / Mail • Includes up to 2 sheets printed front and back in black and white • Includes NCOA processing • Includes return mail processing • Includes up to 4 different letter versions	$.82 / letter	$ 11,206.12
Address Append	$.20 / record	
90 day Call Center Services (US and Canada Only) - FAQ Support - Toll-Free Number	$.20 / person	$ 2,733.2
Credit Monitoring **Choose between a fixed rate for credit monitoring or a redemption rate for credit monitoring.** **Fixed Rate: whether 1 person enrolls or the entire population enrolls, your price will not change** **Redemption Rate: only pay for the individuals that enroll. A minimum charge may apply.**		
Adults TransUnion Credit Monitoring, Report and Score Identity Protection Services Identity Resolution Services $1,000,000 Identity Theft Insurance Minors/Deceased Dark Web Monitoring Identity Protection Services Identity Resolution Services $1,000,000 Identity Theft Insurance	**Fixed Rate** $.25 / one year code **Redemption Rate** $4.00 / enrollment; 3.5% minimum *All options above include up to 5% of the population needed two-years of service at no additional charge	Opt 1: $ 3,416.5 Opt 2: $ 1,912
		Total: Opt 1: $ 17,355.82 Opt 2: $ 15,851.32

This proposal does not include Data Manipulation services. If we need to clean up the data set or create merge fields from a data mining result, we will need to charge an additional fee for this support.

<<City of Franklin>>
c/o Cyberscout
<Return Address>
<City>, <State> <Zip>

<FirstName> <LastName>
<Address1>
<Address2>
<City> <State> <PostalCode+4>

May <<x>>, 2025

Via First-Class Mail

Notice of Data <<Custom Field 1>>

Dear <<FirstName>> <<LastName>>,

We are writing to inform you of an incident that may have exposed your personal information Please read this letter carefully as it contains details about the incident and resources you can utilize to protect your information, including instructions for enrolling in complimentary credit monitoring and identity theft protection services.

What Happened:

We became alerted to a data incident on or about August 15, 2024 An unauthorized third party attempted to infiltrate our network Upon discovering the incident, we moved promptly to secure the network environment and launched an investigation to determine the scope and extent of any potential unauthorized access of our systems with the assistance of external forensic experts At that time, we were not aware that personal data had been impacted

The investigation, which concluded on May 19, 2025, determined that certain files may have been acquired without authorization We then undertook a comprehensive review of the data potentially impacted in this incident to determine whether personal information may have been involved After a thorough review of the impacted data, it was determined that some of your personal information was present in the impacted data set We then took steps to notify you of the incident as quickly as possible.

What Information Was Involved

We found no evidence that your information has been misused. However, the information potentially involved may include your <<data elements inserted by notification vendor>>.

What We Are Doing.

Data security is one of our highest priorities, and we are committed to doing everything we can to protect the privacy and security of the personal information in our care. Upon detecting this incident, we moved quickly to initiate a response, which included conducting an investigation with the assistance of IT specialists and confirming the security of our network environment. We have notified the FBI and are assisting with the investigation. We triaged and restored affected systems and have taken steps to bolster our network security We are continually reviewing and revising technical safeguards and enhancements to prevent a similar incident

Additionally, **although we have no evidence that your information has been misused in any manner**, we are providing you with access to Single Bureau Credit Monitoring/Single Bureau Credit Report/Single Bureau Credit Score services at no charge. These services provide you with alerts for <<Service Length>> from the date of enrollment when changes occur to your credit file. This notification is sent to you the same day that the change or update takes place with the bureau Finally, we are providing you with proactive fraud assistance to help with any questions that you might have or in event that you become a victim of fraud These services will be provided by Cyberscout, a TransUnion company specializing in fraud assistance and remediation services

What You Can Do.

To enroll in Credit Monitoring services at no charge, please log on to https://bfs.cyberscout.com/activate and follow the instructions provided. When prompted please provide the following unique code to receive services: **<<UniqueCode>>**.

In order for you to receive the monitoring services described above, you must enroll within 90 days from the date of this letter. The enrollment requires an internet connection and e-mail account and may not be available to minors under the age of 18 years of age. Please note that when signing up for monitoring services, you may be asked to verify personal information for your own protection to confirm your identity.

For More Information

We encourage you to take full advantage of this service offering. Enclosed you will find additional materials regarding the resources available to you, and the steps you can take to further protect your personal information

Representatives are aware of the incident and can answer questions or concerns you may have regarding protection of your personal information. Please call 1-800-405-6108, Monday through Friday, 8:00 a m. to 8 00 p m ET, excluding holidays, for assistance or for any additional questions you may have.

We value the security of the personal data that we maintain, and understand the frustration, concern, and inconvenience that this incident may have caused

Sincerely,

<<Signor>>
<<Title>>
City of Franklin

Additional Information

Credit Reports You may obtain a copy of your credit report, free of charge, whether or not you suspect any unauthorized activity on your account You may obtain a free copy of your credit report from each of the three nationwide credit reporting agencies To order your free credit report, please visit www annualcreditreport com, or call toll-free at 1-877-322-8228 You can also order your annual free credit report by mailing a completed Annual Credit Report Request Form (available at https //www consumer ftc gov/articles/0155-free-credit-reports) to Annual Credit Report Request Service, P O Box 105281, Atlanta, GA, 30348-5281

Security Freeze: You also have the right to place a security freeze on your credit report A security freeze is intended to prevent credit, loans, and services from being approved in your name without your consent To place a security freeze on your credit report, you need to make a request to each consumer reporting agency You may make that request by certified mail, overnight mail, regular stamped mail, or by following the instructions found at the websites listed below. The following information must be included when requesting a security freeze (note that if you are requesting a credit report for your spouse or a minor under the age of 16, this information must be provided for him/her as well) (1) full name, with middle initial and any suffixes, (2) Social Security number,
(3) date of birth, (4) current address and any previous addresses for the past five years, and (5) any applicable incident report or complaint with a law enforcement agency or the Registry of Motor Vehicles

The request must also include a copy of a government-issued identification card and a copy of a recent utility bill or bank or insurance statement It is essential that each copy be legible, display your name and current mailing address, and the date of issue As of September 21, 2018, it is free to place, lift, or remove a security freeze You may also place a security freeze for children under the age of 16 You may obtain a free security freeze by contacting any one or more of the following national consumer reporting agencies

Equifax Security Freeze	**Experian Security Freeze**	**TransUnion Security Freeze**
P O. Box 105788	PO Box 9554	P O Box 160
Atlanta, GA 30348	Allen, TX 75013	Woodlyn, PA 19094
1-888-298-0045	1-888-397-3742	1-800-916-8800
https //www equifax com/personal/credit-report-services/credit-freeze/	www experian com/freeze/center html	www transunion com/credit-freeze

Fraud Alerts: You can place fraud alerts with the three credit bureaus by phone and online with

- Equifax (https //assets equifax com/assets/personal/Fraud_Alert_Request_Form pdf),
- TransUnion (https //www transunion com/fraud-alerts), or
- Experian (https //www experian.com/fraud/center html)

A fraud alert tells creditors to follow certain procedures, including contacting you, before they open any new accounts or change your existing accounts For that reason, placing a fraud alert can protect you, but also may delay you when you seek to obtain credit As of September 21, 2018, initial fraud alerts last for one year Victims of identity theft can also get an extended fraud alert for seven years The phone numbers for all three credit bureaus are listed above

Monitoring: You should always remain vigilant and monitor your accounts for suspicious or unusual activity

File Police Report You have the right to file or obtain a police report if you experience identity fraud Please note that in order to file a crime report or incident report with law enforcement for identity theft, you will likely need to provide proof that you have been a victim A police report is often required to dispute fraudulent items You can generally report suspected incidents of identity theft to local law enforcement or to the Attorney General

FTC and Attorneys General: You can further educate yourself regarding identity theft, fraud alerts, security freezes, and the steps you can take to protect yourself, by contacting the consumer reporting agencies, the Federal Trade Commission, or your state Attorney General The Federal Trade Commission can be reached at 600 Pennsylvania Avenue NW, Washington, DC 20580, www identitytheft gov, 1-877-ID-THEFT (1-877-438-4338), TTY 1-866-653-4261 The Federal Trade Commission also encourages those who discover that their information has been misused to file

a complaint with them You can obtain further information on how to file such a complaint by way of the contact information listed above You have the right to file a police report if you ever experience identity theft or fraud Please note that in order to file a report with law enforcement for identity theft, you will likely need to provide some proof that you have been a victim Instances of known or suspected identity theft should also be reported to law enforcement This notice has not been delayed by law enforcement.

For Arizona residents, the Attorney General may be contacted at the Consumer Protection & Advocacy Section, 2005 North Central Avenue, Phoenix, AZ 85004, 1-602-542-5025

For Colorado residents, the Attorney General may be contacted through Consumer Protection 1300 Broadway, 9th Floor, Denver, CO 80203 1-720-508-6000, www coag gov

For District of Columbia residents, the District of Columbia Attorney General may be contacted at 400 6th Street, NW, Washington, D C 20001, 202-727-3400, and oag dc gov

For Illinois residents, the Attorney General can be contacted at 100 West Randolph Street, Chicago, IL 60601; 1-866-999-5630; www illinoisattorneygeneral gov

For Iowa residents, you can report any suspected identity theft to law enforcement or to the Attorney General

For Massachusetts residents, it is required by state law that you are informed of your right to obtain a police report filed in regard to this incident If you are the victim of identity theft, you also have the right to file a police report and obtain a copy of it.

For Maryland residents, the Maryland Attorney General can be contacted at 200 St Paul Place, 16th Floor, Baltimore, MD 21202, 1-888-743-0023, and www oag state md us_

For New Mexico residents, you have rights pursuant to the Fair Credit Reporting Act, such as the right to be told if information in your credit file has been used against you, the right to know what is in your credit file, the right to ask for your credit score, and the right to dispute incomplete or inaccurate information Further, pursuant to the Fair Credit Reporting Act, the consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information, consumer reporting agencies may not report outdated negative information, access to your file is limited, you must give your consent for credit reports to be provided to employers, you may limit "prescreened" offers of credit and insurance you get based on information in your credit report, and you may seek damages from violators You may have additional rights under the Fair Credit Reporting Act not summarized here Identity theft victims and active duty military personnel have specific additional rights pursuant to the Fair Credit Reporting Act We encourage you to review your rights pursuant to the Fair Credit Reporting Act by visiting www consumerfinance gov/f/201504_cfpb_summary_your-rights-under-fcra pdf or by writing Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave N W , Washington, D C 20580

For New York residents, the Attorney General may be contacted at Office of the Attorney General, The Capitol, Albany, NY 12224-0341, 1-800-771-7755, and https //ag.ny gov/

For North Carolina residents, the Attorney General can be contacted at 9001 Mail Service Center, Raleigh, NC 27699-9001, 1-877-566-7226 or 1-919-716-6400, and www ncdoj gov

For Rhode Island residents, the Rhode Island Attorney General can be reached at 150 South Main Street, Providence, Rhode Island 02903, www riag ri gov, and 1-401-274-4400 Under Rhode Island law, you have the right to obtain any police report filed regarding this incident. There are approximately [#] Rhode Island residents that may be impacted by this event

For Vermont Residents: If you do not have internet access but would like to learn more about how to place a security freeze on your credit report, contact the Vermont Attorney General's Office at 802-656-3183 (800-649-2424 toll free in Vermont only)

<<City of Franklin>>
c/o Cyberscout
<Return Address>
<City>, <State> <Zip>

<FirstName> <LastName>
<Address1>
<Address2>
<City> <State> <PostalCode+4>

May <<x>>, 2025

Via First-Class Mail

Notice of Data <<Custom Field 1>>

Dear <<FirstName>> <<LastName>>,

We are writing to inform you of an incident that may have exposed your personal information. Please read this letter carefully as it contains details about the incident and resources you can utilize to protect your information, including instructions for enrolling in complimentary credit monitoring and identity theft protection services

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The investigation, which concluded on May 19, 2025, determined that certain files may have been acquired without authorization. We then undertook a comprehensive review of the data potentially impacted in this incident to determine whether personal information may have been involved. After a thorough review of the impacted data, it was determined that some of your personal information was present in the impacted data set. We then took steps to notify you of the incident as quickly as possible.

What Information Was Involved·

We found no evidence that your information has been misused However, the information potentially involved may include your <<data elements inserted by notification vendor>>. **Notably, your Social Security number was not impacted as a result of this incident.**

What We Are Doing

Data security is one of our highest priorities, and we are committed to doing everything we can to protect the privacy and security of the personal information in our care. Upon detecting this incident, we moved quickly to initiate a response, which included conducting an investigation with the assistance of IT specialists and confirming the security of our network environment We have notified the FBI and are assisting with the investigation We triaged and restored affected systems and have taken steps to bolster

our network security We are continually reviewing and revising technical safeguards and enhancements to prevent a similar incident

Additionally, **although we have no evidence that your information has been misused in any manner**, we are providing you with access to Single Bureau Credit Monitoring/Single Bureau Credit Report/Single Bureau Credit Score services at no charge. These services provide you with alerts for <<Service Length>> from the date of enrollment when changes occur to your credit file This notification is sent to you the same day that the change or update takes place with the bureau. Finally, we are providing you with proactive fraud assistance to help with any questions that you might have or in event that you become a victim of fraud These services will be provided by Cyberscout, a TransUnion company specializing in fraud assistance and remediation services

What You Can Do·

To enroll in Credit Monitoring services at no charge, please log on to https://bfs cyberscout.com/activate and follow the instructions provided. When prompted please provide the following unique code to receive services. **<<UniqueCode>>**.

In order for you to receive the monitoring services described above, you must enroll within 90 days from the date of this letter. The enrollment requires an internet connection and e-mail account and may not be available to minors under the age of 18 years of age Please note that when signing up for monitoring services, you may be asked to verify personal information for your own protection to confirm your identity.

For More Information.

We encourage you to take full advantage of this service offering. Enclosed you will find additional materials regarding the resources available to you, and the steps you can take to further protect your personal information.

Representatives are aware of the incident and can answer questions or concerns you may have regarding protection of your personal information Please call 1-800-405-6108, Monday through Friday, 8:00 a.m. to 8.00 p.m ET, excluding holidays, for assistance or for any additional questions you may have

We value the security of the personal data that we maintain, and understand the frustration, concern, and inconvenience that this incident may have caused

Sincerely,

<<Signor>>
<<Title>>
City of Franklin

Additional Information

Credit Reports You may obtain a copy of your credit report, free of charge, whether or not you suspect any unauthorized activity on your account You may obtain a free copy of your credit report from each of the three nationwide credit reporting agencies To order your free credit report, please visit www annualcreditreport com, or call toll-free at 1-877-322-8228 You can also order your annual free credit report by mailing a completed Annual Credit Report Request Form (available at https //www.consumer ftc gov/articles/0155-free-credit-reports) to Annual Credit Report Request Service, P O Box 105281, Atlanta, GA, 30348-5281

Security Freeze: You also have the right to place a security freeze on your credit report A security freeze is intended to prevent credit, loans, and services from being approved in your name without your consent To place a security freeze on your credit report, you need to make a request to each consumer reporting agency You may make that request by certified mail, overnight mail, regular stamped mail, or by following the instructions found at the websites listed below The following information must be included when requesting a security freeze (note that if you are requesting a credit report for your spouse or a minor under the age of 16, this information must be provided for him/her as well) (1) full name, with middle initial and any suffixes, (2) Social Security number;
(3) date of birth, (4) current address and any previous addresses for the past five years, and (5) any applicable incident report or complaint with a law enforcement agency or the Registry of Motor Vehicles

The request must also include a copy of a government-issued identification card and a copy of a recent utility bill or bank or insurance statement. It is essential that each copy be legible, display your name and current mailing address, and the date of issue As of September 21, 2018, it is free to place, lift, or remove a security freeze You may also place a security freeze for children under the age of 16. You may obtain a free security freeze by contacting any one or more of the following national consumer reporting agencies

Equifax Security Freeze	**Experian Security Freeze**	**TransUnion Security Freeze**
P O Box 105788 Atlanta, GA 30348 1-888-298-0045 https //www equifax com/personal/credit-report-services/credit-freeze/	P O Box 9554 Allen, TX 75013 1-888-397-3742 www experian com/freeze/center html	P.O. Box 160 Woodlyn, PA 19094 1-800-916-8800 www transunion com/credit-freeze

Fraud Alerts: You can place fraud alerts with the three credit bureaus by phone and online with

- Equifax (https //assets equifax com/assets/personal/Fraud_Alert_Request_Form pdf),
- TransUnion (https //www transunion com/fraud-alerts), or
- Experian (https //www experian com/fraud/center html)

A fraud alert tells creditors to follow certain procedures, including contacting you, before they open any new accounts or change your existing accounts For that reason, placing a fraud alert can protect you, but also may delay you when you seek to obtain credit As of September 21, 2018, initial fraud alerts last for one year Victims of identity theft can also get an extended fraud alert for seven years The phone numbers for all three credit bureaus are listed above

Monitoring: You should always remain vigilant and monitor your accounts for suspicious or unusual activity

File Police Report You have the right to file or obtain a police report if you experience identity fraud Please note that in order to file a crime report or incident report with law enforcement for identity theft, you will likely need to provide proof that you have been a victim A police report is often required to dispute fraudulent items You can generally report suspected incidents of identity theft to local law enforcement or to the Attorney General

FTC and Attorneys General: You can further educate yourself regarding identity theft, fraud alerts, security freezes, and the steps you can take to protect yourself, by contacting the consumer reporting agencies, the Federal Trade Commission, or your state Attorney General The Federal Trade Commission can be reached at 600 Pennsylvania Avenue NW, Washington, DC 20580, www identitytheft.gov, 1-877-ID-THEFT (1-877-438-4338), TTY 1-866-653-4261 The Federal Trade Commission also encourages those who discover that their information has been misused to file

a complaint with them You can obtain further information on how to file such a complaint by way of the contact information listed above You have the right to file a police report if you ever experience identity theft or fraud. Please note that in order to file a report with law enforcement for identity theft, you will likely need to provide some proof that you have been a victim Instances of known or suspected identity theft should also be reported to law enforcement This notice has not been delayed by law enforcement

For Arizona residents, the Attorney General may be contacted at the Consumer Protection & Advocacy Section, 2005 North Central Avenue, Phoenix, AZ 85004, 1-602-542-5025

For Colorado residents, the Attorney General may be contacted through Consumer Protection 1300 Broadway, 9th Floor, Denver, CO 80203 1-720-508-6000, www coag gov

For District of Columbia residents, the District of Columbia Attorney General may be contacted at 400 6th Street, NW, Washington, D C 20001, 202-727-3400, and oag dc gov

For Illinois residents, the Attorney General can be contacted at 100 West Randolph Street, Chicago, IL 60601; 1-866-999-5630; www illinoisattorneygeneral gov

For Iowa residents, you can report any suspected identity theft to law enforcement or to the Attorney General

For Massachusetts residents, it is required by state law that you are informed of your right to obtain a police report filed in regard to this incident. If you are the victim of identity theft, you also have the right to file a police report and obtain a copy of it.

For Maryland residents, the Maryland Attorney General can be contacted at 200 St Paul Place, 16th Floor, Baltimore, MD 21202, 1-888-743-0023, and www oag state md us_

For New Mexico residents, you have rights pursuant to the Fair Credit Reporting Act, such as the right to be told if information in your credit file has been used against you, the right to know what is in your credit file, the right to ask for your credit score, and the right to dispute incomplete or inaccurate information Further, pursuant to the Fair Credit Reporting Act, the consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information, consumer reporting agencies may not report outdated negative information, access to your file is limited; you must give your consent for credit reports to be provided to employers; you may limit "prescreened" offers of credit and insurance you get based on information in your credit report, and you may seek damages from violators You may have additional rights under the Fair Credit Reporting Act not summarized here. Identity theft victims and active duty military personnel have specific additional rights pursuant to the Fair Credit Reporting Act We encourage you to review your rights pursuant to the Fair Credit Reporting Act by visiting www consumerfinance gov/f/201504_cfpb_summary_your-rights-under-fcra pdf or by writing Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave N W , Washington, D C 20580

For New York residents, the Attorney General may be contacted at Office of the Attorney General, The Capitol, Albany, NY 12224-0341, 1-800-771-7755, and https //ag.ny gov/

For North Carolina residents, the Attorney General can be contacted at 9001 Mail Service Center, Raleigh, NC 27699-9001, 1-877-566-7226 or 1-919-716-6400, and www ncdoj gov

For Rhode Island residents, the Rhode Island Attorney General can be reached at 150 South Main Street, Providence, Rhode Island 02903, www riag ri gov, and 1-401-274-4400 Under Rhode Island law, you have the right to obtain any police report filed regarding this incident There are approximately [#] Rhode Island residents that may be impacted by this event

For Vermont Residents: If you do not have internet access but would like to learn more about how to place a security freeze on your credit report, contact the Vermont Attorney General's Office at 802-656-3183 (800-649-2424 toll free in Vermont only)

CONFIDENTIAL
Do Not Distribute or Disseminate

City of Franklin
Frequently Asked Questions

1. What happened?

On or about August 15, 2024, the City of Franklin ("Franklin") became alerted to a cybersecurity incident. An unauthorized third party attempted to infiltrate Franklin's network. Upon detecting the incident, Franklin moved quickly to secure the network and launched an investigation to determine the scope and extent of any potential unauthorized access of our systems. The investigation was conducted with the help of independent IT and forensic investigators.

2. When did the City of Franklin ("Franklin") learn of this incident?

Franklin became alerted to the incident on or about August 15, 2024. However, the investigation that identified the personal information that was impacted recently concluded on May 19, 2025.

3. I received a letter in the mail. Is this fraudulent, a scam, or a real incident?

Federal and state laws require that we notify you by mail. We can assure you that this incident did occur and thus we are offering the support identified within the notification letter. We would encourage you to take advantage of the identity monitoring services provided and call us at the number noted within the letter if you have further questions or concerns.

[**Note for the call center**: if the caller persists in questioning the validity of the letter, please take down their name and phone number, and add to the escalation tracker].

4. Why didn't you just call me?

State and Federal laws require written notification. Also, we wanted to be sure you knew this was a legitimate notice and that the affected people received the notice.

5. Why didn't you contact me before? / Why did it take this long to notify me?

Upon detecting the incident, Franklin moved quickly to secure its network and launched an investigation to determine the scope and extent of any potential unauthorized access of our systems with the assistance of external forensic experts. The investigation that identified the personal information that was impacted recently concluded on May 19, 2025.

Franklin then worked quickly to provide notification to potentially impacted individuals. It took time for Franklin to conduct the investigation into the scope of impact, prepare notification letters, perform a NCOA search to secure updated addresses for each individual, and engage a vendor to send notification letters to potentially impacted individuals.

6. What kind of data was compromised?

Although we have no evidence that your information has been specifically misused, it is possible that certain sensitive information could have been exposed to the unauthorized party. Please reference your letter for the types of information potentially at risk.

7. Has my information been misused?

Franklin has not received any reports of related identity theft since the date the incident was discovered (August 15, 2024, to present).

8. Does Franklin know who is responsible for this?

No, the identity of the party responsible for this incident is still being investigated.

9. How many people were affected by the data breach?

We do not have this information, but every individual potentially compromised has received a similar letter.

10. Is my spouse/family member/friend affected? He/she/they is/was/were a <<resident/employee/other>> of Franklin as well.

Each impacted person will, or should have received a letter from Franklin. Unless he/she/they has received a letter, he/she/they is not affected by this incident.

11. What is Franklin doing to make sure this does not ever happen again?

The security and privacy of personal data remains one of Franklin's highest priorities. In response to this incident, Franklin has taken steps to prevent a similar incident from occurring in the future by implementing additional safeguards and enhanced security measures.

12. Who is Transunion? I thought my information was held by Franklin.

Transunion has been hired by Franklin to provide you with services following the incident.

13. Who is <<Cyberscout>>?

You have dialed the toll-free assistance line set up by Franklin to provide individuals with additional information about the incident. We are not part of Franklin and do not have access to your personal information. We have been engaged by Franklin to provide you with basic information regarding the event and access to resources to assist you with enrolling in identity protection services and preventing identity theft and fraud. If you would like to speak directly with Franklin, please provide your name and contact information and someone with Franklin will contact you.

14. What can I do to protect against identity theft or fraud?

There are a variety of steps you can take, many of which were detailed in the letter you received. These include placing a fraud alert with the credit bureaus, reviewing your financial statements, and signing up for credit monitoring.

15. I am not satisfied that you are doing enough to protect me - what else can you do to help? I will be contacting my attorney or filing a lawsuit.

I understand your concerns. Please allow me to take your name and number and I will have Franklin management give you a call back directly soon to discuss this with you further.

Note to CSR: Escalate call in database. Be sure you capture a telephone number so a return call can be made.

16. Should I check my credit report?

You should monitor your credit report regardless of whether your information has been exposed or you think you may be a victim of identity theft or fraud. Every U.S. consumer over the age of eighteen can receive one free credit report every twelve months by contacting one of the three national credit bureaus or through the Annual Credit Report Service by visiting www.annualcreditreport.com or calling toll-free, 1-877-322-8228.

17. I think I may be a victim of identity theft. What should I do?

In the unlikely event that your information is misused, a CyberScout personal advocate will work with you from the first call you make to report the problem until the crisis is resolved. CyberScout will notify the appropriate agencies, businesses, and institutions, and will make a comprehensive case file.

18. I want to speak with someone at Franklin / I am with law enforcement / I am with the media.

Please give us your name and contact information and someone will contact you soon.

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 6/17/2025
REPORTS & RECOMMENDATIONS	**Authorize a Professional Services Agreement Between the City of Franklin and Secure Compliance Solutions, LLC (SCS) to Provide External and Internal Penetration Testing and Reporting Services—Funded by Account Number 01-0144-5299**	ITEM NUMBER G. 8.

Background:

As outlined within the business case for the IT operational outlay budget for 2025, after new computer, domain migration, and synchronization to the Microsoft 365 cloud, it is considered best security practice to perform a full external penetration test by a third-party provider. It is recognized within the security industry that changing security providers every 2-3 years is considered a best practice, as more insights are gathered by having different engineers view the network using different technologies and analysis techniques. The penetration test will simulate an aggressive attack on the outer perimeter defenses, and will confirm firewalls have been configured and hardened correctly to thwart the attack. The benefit of a manual conversion is each firewall and NAT rule is closely examined and evaluated in granting least access as possible for the communication stream. Human error can occur; therefore, it is prudent to have a full penetration test performed post major any security or infrastructure upgrade of the equipment to determine if any vulnerabilities or misconfigurations exist.

Recommendation:

The City of Franklin will be switching to SCS for security analysis services, who had submitted a competing bid for the domain migration and Office 365 projects and was evaluated by the Technology Commission. This proposal addressed several key issues:

- External penetration testing will be performed for all externally assigned IP addresses and NAT resources. This is in alignment with the City of Franklin Strategic Technology Plan, where external penetration testing is to be performed on a bi-annual basis.
- The SCS proposal will also perform a limited sampling internal penetration test as well, based upon system available and user schedules. All servers will undergo a full penetration test, while workstations/laptops will be analyzed when they are actively powered on. The goal is to determine the possibility of both vertical and horizontal network access movement of a potentially compromised computer. Network routing has been significantly modified, so it is prudent to determine exactly how malware can spread on the network.
- All testing will be non-intrusive. Denial of service attacks will be limited in order to prevent bringing down critical operational services during the testing.
- Penetration testing will utilize both automated and manual attack procedures.
- All reporting will follow the MITRE framework. Reports will indicate the probability that the vulnerability will be exposed/implemented, and the criticality of operations if the system were to be lost due to being compromised. Both factors will create a criticality score, which will be used to determine what vulnerabilities should be immediately addressed.
- Testing will be performed in two phases. The first phase will outline any critical or high priority vulnerabilities, and indicate IT corrective actions to eliminate the security issue. A second round of testing will be performed to ascertain if the remediations actually did eliminate the vulnerability.

- All outstanding vulnerabilities will be added to the IT Risk/Watch matrix and tracked by the Technology Commission until the issues are fully addressed.

Fiscal Impact:

SCS has submitted a flat rate proposal of $26,000 that covers all server, laptops, and workstations on the network. This is significantly different from previous vendor proposals (a.k.a. Forsite) that had a limit of 500 nodes on the internal network that would be scanned. The vendor is including automated vulnerability management services with the project proposal, where annual and monthly vulnerability reports will be generated and deficiencies discussed. The services will be in addition to the free Rapid 7 vulnerability management tools. Both vulnerability management and perimeter penetration testing are required elements within the FBI/DOJ CJIS 5.9.5 security requirements.

Budgetary Impact:

Sections and controls RA-3 and RA-5 for the DOJ/FBI CJIS 5.9.5 security framework require annual penetration tests and monthly vulnerability assessments be performed as part of organizational risk management. In previous budgets, penetration testing was performed every two years on a bi-annual basis. Changes in auditing requirements stipulate that future budgets must include the cost of annual penetration testing and ongoing vulnerability management scanning and assessment. Both elements are included within the risk assessment scorecard/matrix, which is given a score and priority in alignment to the MITRE framework. For future budgets, funding should be established at a base level of $26,000 with expected minimal increase of 5% annually.

Total Project Budget: $26,500

Total Services: $26,000

COUNCIL ACTION REQUESTED

Motion to authorize a Professional Services Agreement between the City of Franklin and Secure Compliance Solutions, LLC for External and Internal Penetration Testing and Reporting Services, not to exceed the total project cost of $26,000, funded by Account Number 01-0144-5299, with the City Attorney and Director of IT authorized to make minor technical modifications to the service agreement.

IT-JM

AGREEMENT

This AGREEMENT, is made and entered into this 10th day of June 2025, between the City of Franklin, 9229 West Loomis Road, Franklin, Wisconsin 53132 (hereinafter "CLIENT") and Secure Compliance Solutions LLC, (hereinafter "CONTRACTOR"), whose principal place of business is 4415 Harrison Street, Suite 406, Hillside, IL 60162.

WITNESSETH

WHEREAS, the CONTRACTOR is duly qualified and experienced as a municipal services contractor and has offered services for the purposes specified in this AGREEMENT; and

WHEREAS, in the judgment of CLIENT, it is necessary and advisable to obtain the services of the CONTRACTOR to provide cybersecurity testing;

NOW, THEREFORE, in consideration of these premises and the following mutual covenants, terms, and conditions, CLIENT and CONTRACTOR agree as follows:

I. BASIC SERVICES AND AGREEMENT ADMINISTRATION

A. CONTRACTOR shall provide services to CLIENT for managed autonomous testing and annual manual penetration testing, as described in CONTRACTOR's proposal to CLIENT dated June 12, 2025, annexed hereto and incorporated herein as Attachment A.

B. CONTRACTOR shall serve as CLIENT's professional representative in matters to which this AGREEMENT applies. CONTRACTOR may employ the services of outside consultants and subcontractors when deemed necessary by CONTRACTOR to complete work under this AGREEMENT following approval by CLIENT.

C. CONTRACTOR is an independent contractor and all persons furnishing services hereunder are employees of, or independent subcontractors to, CONTRACTOR and not of CLIENT. All obligations under the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax Act (FUTA), and income tax withholding are the responsibility of CONTRACTOR as employer. CLIENT understands that express AGREEMENTS may exist between CONTRACTOR and its employees regarding extra work, competition, and nondisclosure.

D. During the term of this AGREEMENT and throughout the period of performance of any resultant AGREEMENT, including extensions, modifications, or additions thereto, and for a period of one (1) year from the conclusion of such activity, the parties hereto agree that neither shall solicit for employment any technical or professional employees of the other without the prior written approval of the other party.

II. FEES AND PAYMENTS

CLIENT agrees to pay CONTRACTOR, for and in consideration of the performance of Basic Services further described in Attachment A, with a not-to-exceed budget of $26,000, subject to the terms detailed below:

A. CONTRACTOR may bill CLIENT and be paid for all work satisfactorily completed hereunder on a monthly basis. CLIENT agrees to pay CONTRACTOR's invoice within 30 days of invoice date for all approved work.

B. Total price will not exceed budget of $26,000. For services rendered, monthly invoices will include a report that clearly states the hours and type of work completed and the fee earned during the month being invoiced.

C. In consideration of the faithful performance of this AGREEMENT, the CONTRACTOR will not exceed the fee for Basic Services and expenses without written authorization from CLIENT to perform work over and above that described in the original AGREEMENT.

D. Should CLIENT find deficiencies in work performed or reported, it will notify CONTRACTOR in writing within thirty (30) days of receipt of invoice and related report and the CONTRACTOR will remedy the deficiencies within thirty (30) days of receiving CLIENT's review. This subsection shall not be construed to be a limitation of any rights or remedies otherwise available to CLIENT.

III. MODIFICATION AND ADDITIONAL SERVICES

A. CLIENT may, in writing, request changes in the Basic Services required to be performed by CONTRACTOR and require a specification of incremental or decremental costs prior to change order agreement under this AGREEMENT. Upon acceptance of the request of such changes, CONTRACTOR shall submit a "Change Order Request Form" to CLIENT for authorization and notice to proceed signature and return to CONTRACTOR. Should any such actual changes be made, an equitable adjustment will be made to compensate CONTRACTOR or reduce the fixed price, for any incremental or decremental labor or direct costs, respectively. Any claim by CONTRACTOR for adjustments hereunder must be made to CLIENT in writing no later than forty-five (45) days after receipt by CONTRACTOR of notice of such changes from CLIENT.

IV. ASSISTANCE AND CONTROL

A. Secure Compliance Solutions will coordinate the work of the CONTRACTOR, and be solely responsible for communication within the CLIENT's organization as related to all issues originating under this AGREEMENT.

B. CLIENT will timely provide CONTRACTOR with all available information concerning PROJECT as deemed necessary by CONTRACTOR.

C. CONTRACTOR will appoint, subject to the approval of CLIENT, James Matelski, Director of IT, CONTRACTOR's Project Manager and other key providers of the Basic Services. Substitution of other staff may occur only with the consent of CLIENT.

V. TERMINATION

A. This AGREEMENT may be terminated by CLIENT, for its convenience, for any or no reason, upon written notice to CONTRACTOR. This AGREEMENT may be terminated by CONTRACTOR upon thirty (30) days written notice. Upon such termination by CLIENT, CONTRACTOR shall be entitled to payment of such amount as shall fairly compensate CONTRACTOR for all work approved up to the date of termination, except that no amount shall be payable for any losses of revenue or profit from any source outside the scope of this AGREEMENT, including but not limited to, other actual or potential agreements for services with other parties.

B. In the event that this AGREEMENT is terminated for any reason, CONTRACTOR shall deliver to CLIENT all data, reports, summaries, correspondence, and other written, printed, or tabulated material pertaining in any way to Basic Services that CONTRACTOR may have accumulated. Such material is to be delivered to CLIENT whether in completed form or in process. CLIENT shall hold CONTRACTOR harmless for any work that is incomplete due to early termination.

C. The rights and remedies of CLIENT and CONTRACTOR under this section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other article of this AGREEMENT.

VI. INSURANCE

The CONTRACTOR shall, during the life of the AGREEMENT, maintain insurance coverage with an authorized insurance carrier at least equal to the minimum limits set forth below:

A. General/Commercial Liability (*Must have General/Commercial*)	$1,000,000 per each occurrence for bodily injury, personal injury, and property damage $2,000,000 per general aggregate, *CITY shall be named as an additional insured on a primary, non-contributory basis.*
B. Automobile Liability *(Must have auto liability)*	$1,000,000 combined single limit *CITY shall be named as an additional insured on a primary, non-contributory basis.*
C. Umbrella or Excess Liability Coverage for General/Commercial, Automobile Liability, and Contractor's Pollution Liability	$10,000,000 per occurrence for bodily injury, personal injury, and property *CITY shall be named as an additional insured on a primary, non-contributory basis.*

D. Worker's Compensation and Employers' Liability *(Must have workers compensation)*	Statutory *Contractor will provide a waiver of subrogation and/or any rights of recovery allowed under any workers' compensation law*
D. Professional Liability (Errors & Omissions) including cyber security, privacy, and network	$2,000,000 single limit

Upon the execution of this AGREEMENT, CONTRACTOR shall supply CLIENT with a suitable statement certifying said protection and defining the terms of the policy issued, which shall specify that such protection shall not be cancelled without thirty (30) calendar days prior notice to CLIENT, and naming CLIENT as an additional insured as required above.

VII. INDEMNIFICATION AND ALLOCATION OF RISK

A. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless CLIENT, CLIENT'S officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CONTRACTOR or CONTRACTOR'S officers, directors, partners, employees, and consultants in the performance of CONTRACTOR'S services under this AGREEMENT.

B. Nothing contained within this AGREEMENT is intended to be a waiver or estoppel of the contracting municipality CLIENT or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wisconsin Statutes §§ 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality CLIENT or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

VIII. TIME FOR COMPLETION

CONTRACTOR shall commence work immediately having received a Notice to Proceed as of August 01, 2025.

IX. DISPUTES

This AGREEMENT shall be construed under and governed by the laws of the State of Wisconsin. The venue for any actions arising under this AGREEMENT shall be the Circuit Court for Milwaukee County. The prevailing party shall be awarded its actual costs of any such litigation, including reasonable attorney fees.

X. RECORDS RETENTION

CONTRACTOR shall maintain all records pertaining to this AGREEMENT during the term of this AGREEMENT and for a period of 7 years following its completion. Such records shall be made available by the CONTRACTOR to CLIENT for inspection and copying upon request.

XI. MISCELLANEOUS PROVISIONS

A. Professionalism. The same degree of care, skill and diligence shall be exercised in the performance of the services as is possessed and exercised by a member of the same profession, currently practicing, under similar circumstances, and all persons providing such services under this AGREEMENT shall have such active certifications, licenses and permissions as may be required by law.

B. Pursuant to Law. Notwithstanding anything to the contrary anywhere else set forth within this AGREEMENT, all services and any and all materials and/or products provided by CONTRACTOR under this AGREEMENT shall be in compliance with all applicable governmental laws, statutes, decisions, codes, rules, orders, and ordinances, be they Federal, State, County or Local.

C. Conflict of Interest. CONTRACTOR warrants that neither it nor any of its affiliates has any financial or other personal interest that would conflict in any manner with the performance of the services under this Agreement and that neither it nor any of its affiliates will acquire directly or indirectly any such interest. CONTRACTOR warrants that it will immediately notify the CLIENT if any actual or potential conflict of interest arises or becomes known to the CONTRACTOR. Upon receipt of such notification, a CLIENT review and written approval is required for the CONTRACTOR to continue to perform work under this Agreement.

D. This AGREEMENT may be executed in multiple counterparts, and will have the same legal force and effect as if the CONTRACTOR and CLIENT had executed it as a single document. The CONTRACTOR and CLIENT agree that fully electronic signatures and records are acceptable, under Chapter 137 of the Wisconsin Statutes. The CONTRACTOR and CLIENT may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document, and any amendment hereto.

E. This AGREEMENT may only be amended by written instrument signed by both CLIENT and CONTRACTOR.

XII. CONTROLLING TERMS AND PROVISIONS

The aforesaid terms and provisions shall control over any conflicting term or provision of any CONTRACTOR proposal, Attachment, Exhibit, and standard terms and provisions annexed hereto.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the day and year first above written.

CITY OF FRANKLIN, WISCONSIN

BY _____

PRINT NAME John R Nelson

TITLE Mayor

DATE _____

BY _____

PRINT NAME Danielle L Brown

TITLE. Director of Finance and Treasurer

DATE _____

BY _____

PRINT NAME Shirley J Roberts

TITLE City Clerk

DATE _____

SECURE COMPLIANCE SOLUTIONS

BY _____

PRINT NAME _____

TITLE _____

DATE _____

Approved as to form

_____

Jesse A Wesolowski, City Attorney

DATE _____

Appendix A

Summary

Statement of Work – Cyber Security Penetration and Vulnerability Testing and Risk Assessment

Date – June 12, 2025

Cost - $26,000 (fixed rate)

CYBERSECURITY SERVICES FOR CITY OF FRANKLIN, WISCONSIN

STATEMENT OF WORK

This Statement of Work ("SOW") is entered into and made effective as of the signature date ("Effective Date") by and between Secure Compliance Solutions, LLC ("SCS"), and City of Franklin, Wisconsin ("Client") or ("Franklin") and is made pursuant to SCS terms and conditions located at https://scsprotect.com/termsandconditions ("Agreement") and entered into as of the Effective Date.

Capitalized terms used herein but not otherwise defined herein have the meanings ascribed to such terms in the Agreement. If the terms and/or conditions of this SOW conflict with the terms and/or conditions of the Agreement and/or with any other statement of work, the terms and/or conditions of this SOW will control (unless otherwise expressly provided herein or in the Agreement) solely with respect to the Services performed under this SOW.

1. **Services**
   a. **Description of Services**. SCS shall provide the following Services as described in Exhibit A attached hereto. SCS will provide hardware and software associated with the Services as described in Exhibit A as part of the Annual Fee.
2. **Term**
   a. **Service Term**. The Services shall commence on or about September 1, 2025 at a mutually agreeable date and shall continue for a period of (12) months in accordance with the terms and conditions contained herein and in the Agreement. The Agreement will auto-renew with a five (5%) percent increase in pricing unless an amendment or new contract is signed, or ninety (90) day written notice is provided by either party for termination or SCS provides price changes to these terms.
3. **Fees and Payment Terms**
   a. In consideration of the performance of the Services, Client agrees to pay SCS as follows:
      i. Annual Fee of **$26,000.00**
      ii. One-time onboarding fee will be **waived.**
   b. Out of scope. In the event out-of-scope additional labor and/or services are performed by SCS and/or its subcontractors, Client agrees to pay SCS at its then current hourly rate for such services.

Resource Type	Hourly
Incident Response Resources	$400.00
Senior Cybersecurity Professional - CISO Level	$350.00
Senior Cybersecurity Engineer	$300.00
Senior IT Professional - Director Level	$250.00
Security Engineer	$225.00
Senior IT Engineer	$200.00
System Administrator - Help Desk Support	$175.00
Project Manager	$150.00
Senior Procurement Professional	$125.00

   c. Payments shall be made in accordance with the terms and conditions of the Agreement.

Payment shall be made in U.S. dollars and will be due thirty (30) days from the date of the invoice. The Invoice shall be delivered on or about August 1, 2025. Payments made later than the due date are subject to and may incur accrued interest from the date due to the paid date paid up to the maximum percentage allowed by applicable law. If payment is late, SCS shall be entitled to suspend performance of the Services and, at its option, terminate the Statement of Work on written notice.

CYBERSECURITY SERVICES FOR CITY OF FRANKLIN, WISCONSIN

EXHIBIT A

INTRODUCTION:

The city of Franklin is home to approximately 40,000 residents in suburban Milwaukee. The city government is responsible for the business of the city running smoothly. This includes many departments, over 10 physical locations for public services and important departments of administration and functions including but not limited to Administration, Police, Fire Department, Parks and Recreation, Public Works just to name a few. The Information Technology Department is responsible for the technology and cybersecurity of the city operations. The Department IT Director and Technology Commission utilize third parties for specific expertise. In this case, SCS has been asked to provide Penetration Testing and Vulnerability Management Services to improve the cybersecurity capabilities and lower the risk levels of all functions of the city technology operations.

Secure Compliance Solutions (SCS) provides a wide range of Cybersecurity Consulting, Penetration Testing, Managed Security and IT Services to businesses and government agencies, fortifying their Information Security and Data Privacy programs. SCS works with its clients to tailor and implement industry-proven frameworks and standards to meet compliance goals and drive consistent secure operations. We implement technical solutions and controls to minimize data risks and liabilities. Our Managed Security Service provides "constant watch" against both internal and external cyber threats and attacks. At SCS, we promote a strategy of readiness and resilience that facilitates organizational risk mitigation and enables dynamic response capabilities to keep your business up and running.

This proposal is customized based upon conversations and information provided by City of Franklin technical resources. The following pages describe the overall approach, time frames, services and deliverables associated with Penetration Testing and Vulnerability Management Services.

SERVICES:

VULNERABILITY MANAGEMENT PROGRAM SERVICES DESCRIPTION

SCS' Vulnerability Management Program is a critical component to an organization's security posture. These Services provide a structured and proactive approach to identifying, assessing, prioritizing, and remediating security weaknesses before they can be exploited by threat actors.

Key benefits from this program include:

- **Risk Reduction**, systematically reducing the attack surface through vulnerability remediation
- **Proactive Defense** – stay ahead of potential exploit entry points by timely identification and remediation
- **Security Posture Visibility** - Routine reporting on vulnerabilities provides leadership and IT teams with measurable insights into the organization's security health and areas needing attention.
- **Regulatory Compliance –** Meeting compliance requirements for an organization through routine scanning and remediation efforts.

SCS will provide:

- **Monthly Internal Vulnerability Scanning**. SCS will provide software and install an agent on all client endpoints providing ongoing scanning and identification of vulnerabilities in the environment. A monthly report summarizing results and prioritizing the riskiest items will be generated. These results and recommendations will be discussed during a monthly meeting.

CYBERSECURITY SERVICES FOR CITY OF FRANKLIN, WISCONSIN

- **Quarterly External Vulnerability Scanning**. SCS will provide software and run a scan of external IP addresses in scope for the client environment. These findings and recommendations will be provided quarterly.
- **Routine Vulnerability Remediation Report and Review**. SCS will provide the following meetings and reports as part of the service.
    - SCS will generate a monthly report of vulnerability scanning. This report will detail vulnerabilities identified by tools SCS utilizes. The reports will be written, administered and evaluated by SCS employees to deliver information and recommendations for remediation of the vulnerabilities. SCS reports will utilize proprietary information. SCS will combine best practices, multiple industry vulnerability scales and standards to effectively recommend priorities for Client remediation tasks and to lower risk levels of the organization.
    - A monthly report review meeting of current internal vulnerabilities to review highest risk vulnerabilities and discussion on where to focus remediation energies. The report will be reviewed in a 30-minute meeting with the SCS technical team. SCS will collaborate on a remediation plan on an as needed basis.
    - A quarterly external scan results report will be shared and reviewed, typically as part of the monthly meeting. SCS will collaborate on a remediation plan on an as needed basis.
    - This assessment utilizes CVSS v3.1 scoring methodology, the industry-standard framework maintained by FIRST.org for vulnerability severity assessment. Our vulnerability management tools implement standardized risk scoring that incorporates assessment criteria referenced in MITRE's CVE database and ATT&CK framework guidance for threat-informed vulnerability prioritization, including:
        - Base Score factors (Attack Vector, Attack Complexity, Privileges Required, User Interaction, Scope, Confidentiality/Integrity/Availability Impact)
        - Temporal factors (Exploit Code Maturity, Remediation Level, Report Confidence)
        - Environmental considerations specific to your infrastructure
        - This methodology aligns with CVSS framework standards and MITRE's CVE database, ensuring vulnerability priority ratings meet established assessment standards while providing accurate risk context for your specific environment.

- ***Optional:*** Create or Review and update Vulnerability Management Policy and Procedure. SCS will either review current documents and offer improvements based upon best practices or write a new policy.

SCS participates in a variety of cybersecurity organizations, associations as well as peer information sharing and trade groups. During operations, SCS may share cyber threat data with peers to improve the collective defense intelligence, which ultimately strengthens our own defensive practices. All data that SCS shares with peers will be de-identified prior to use. SCS will never expose a client's cybersecurity posture information without prior written consent.

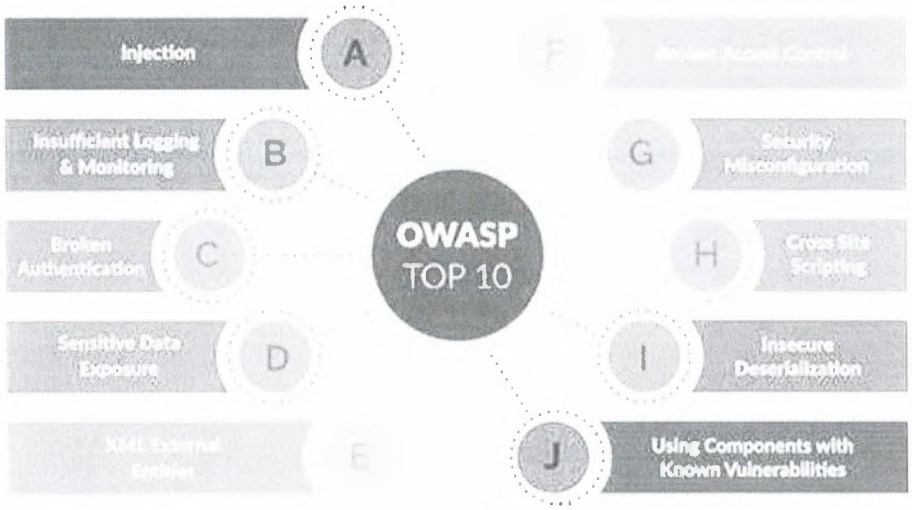
CYBERSECURITY SERVICES FOR CITY OF FRANKLIN, WISCONSIN

PENETRATION TESTING SERVICES DESCRIPTION

- SCS will provide tools, knowledge and expertise to execute an internal and external penetration test, including testing of the wireless and/or guest network, on customer designated devices. We can operate with as little or as much knowledge as desired by the Client.
- Complete an External Vulnerability and a Network Uncredentialed Internal Vulnerability Scan. Using a variety of software scanning tools and technical tests, SCS will identify vulnerabilities in the network. As part of the final report, SCS will provide an interpretation of the vulnerability scan results including suggested remediation actions.

Some of the test scenarios for simulating cyberattacks are listed below:

- Cross-Site Scripting
- Security Misconfigurations
- SQL Injection
- Password Cracking
- Caching Serve Attacks
- Cross-Site Request Forgery
- File Upload flaws
- Broken authentication and session management



- The Penetration Testing will take approximately 20 Business Day(s) to complete. SCS will present preliminary key findings, allow 5 business days for remediation, and 5 business days to retest with a final report being provided within 2 week(s) after the retesting is completed.
- Client will jointly determine the start date and allowable times for the engagement testing. Testing will start within 45 days of contract signature.

SCS will attempt to compromise the access controls on designated systems by employing the following methodology:

- **Enumeration:** SCS will connect to the network via the public internet. At the start of the test, SCS will run a variety of information gathering tools to enumerate ports and protocols exposed by the network

security devices. During the internal test, SCS will use direct network access to scan the environment to identify all connected systems and catalog exposed ports.

- **Vulnerability Mapping and Penetration:** Any computers or devices found will be scanned for vulnerabilities using a wide variety of tools and techniques. The tools and techniques used will be consistent with current industry trends regarding exploitation of vulnerabilities. SCS will attempt to find the weakest link that can be exploited and attempt to gain further access into the network. SCS will attempt to penetrate the network up to and including the point at which sensitive data can be accessed.
- **Tracking of penetration attempt** – Throughout the penetration test. SCS will document and record the process. SCS will provide a report of the penetration test which will include data obtained from the network, and any information regarding exploitation of vulnerabilities and the attempt to gain access to sensitive data. If a web application penetration test is elected, this will occur concurrently with the internal and external testing, adding no additional work time.
- **Remediation** – SCS will provide recommendations for remediation of all vulnerabilities found during the exercise.
- **Summary Report** -- provide recommendations for remediation of all vulnerabilities found during the exercise.

PENETRATION TESTING TASKS & DELIVERABLES:

SCS will provide the following deliverables as part of this engagement.

Service	Activities & Deliverables
Kickoff Meeting	Discuss the test plan, timing of testing, depth of testing, activities & timelines, requested action(s), success criteria, and obtain IP Address list as appropriate. Plan for timing of initial scanning to be run. General Q&A.
Vulnerability Assessment & Penetration Testing	Vulnerability Scanning, Reconnaissance & Research Activities. Perform External and Internal Penetration Testing in a manner that protects data integrity.
Activities	Meetings to share progress and items of note.
Project Reports & Close	Initial Assessment Report, Final Report, Closing Meeting to review findings and share insights on next steps to address risks, vulnerabilities, and remediation suggestions.

PENETRATION TESTING SCHEDULE:
SCS will complete the project within a 6 to 8-week timeframe, which will allow time for the Franklin technical resources to remediate initial findings prior to the SCS team completing the final penetration test and report.

- The Penetration Testing will take approximately 20 Business Day(s) to complete. SCS will present preliminary key findings, allow five (5) business days for remediation, five (5) business days to retest with a final report being provided within three (3) weeks after the retesting is completed.

- Customer and SCS will jointly determine the start date and allowable times for the engagement testing.

LIMITATIONS OF ASSESSMENT SCOPE AND FINDINGS:

The penetration testing activities outlined in this Statement of Work will be conducted within a finite, predefined period of time. While reasonable efforts will be made to identify vulnerabilities and simulate exploit scenarios using industry best practices, this engagement does not guarantee the identification of all potential security weaknesses or vulnerabilities in the environment. Additionally, new threats and vulnerabilities emerge continuously, and the findings in this report reflect the environment and threat landscape only at the time of testing. As such, the results should not be interpreted as a comprehensive or enduring assessment of overall security posture.

SITE AND RESOURCES:

Most work will be performed at SCS offices and meetings will utilize conferencing technologies. However, SCS resources may be required to place and utilize a device SCS configures, and Client arranges to have onsite at one of their locations or data centers.

ASSUMPTIONS & CLIENT RESPONSIBILITES:

- All time frames and milestones are estimates.
- Data is highly sensitive information that is handled with care. SCS will use appropriate communication channels including but not limited to private and encrypted methods on an as needed basis.
- Factors outside of SCS control can impact estimates and include but are not limited to:
    - Client IT team response times to request,
    - Client operational parameters,
    - Any omitted information,
    - Client business decisions.
- Client will provide a main POC (Point of Contact).

IN WITNESS WHEREOF, the parties have caused this Statement of Work to be signed by their duly authorized representatives as of the date set forth below.

CITY OF FRANKLIN, WISCONSIN	**SECURE COMPLIANCE SOLUTIONS, LLC**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date:	Date:

SECUCOM-01 CKOHOUT

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 6/10/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER J. Krug 1 Pierce Place Suite 1250W Itasca, IL 60143	CONTACT NAME: PHONE (A/C No, Ext) (847) 392-8585 FAX (A/C No) (847) 392-8137 E-MAIL ADDRESS: certificates@jkrug.com
	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A Hartford Insurance Company 19682 INSURER B Beazley Insurance Co. 37540 INSURER C INSURER D INSURER E INSURER F
INSURED Secure Compliance Solutions, LLC 4415 W Harrison St., Ste 504 Hillside, IL 60162	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE X OCCUR	X		83SBANW4632	9/21/2024	9/21/2025	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER.						GENERAL AGGREGATE	$ 4,000,000
	X POLICY PRO-JECT LOC						PRODUCTS COMP/OP AGG	$ 4,000,000
	OTHER							$
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 2,000,000
	ANY AUTO	X		83SBANW4632	9/21/2024	9/21/2025	BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: Y	N/A		83WECAA6ABD	8/23/2024	8/23/2025	E.L. EACH ACCIDENT	$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE EA EMPLOYEE	$ 500,000
							E.L. DISEASE POLICY LIMIT	$ 500,000
B	Professional Liabili			W35BFC240201	9/21/2024	9/21/2025	Limit	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule may be attached if more space is required)
The following are added as additional insureds with respect to general liability and auto liability on a primary and non-contributory basis, as required by written contract
City of Franklin, WI

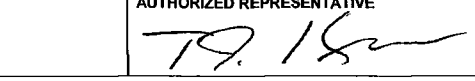
CERTIFICATE HOLDER

City of Franklin, WI
9229 W Loomis Rd
Franklin, WI 53132

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS

AUTHORIZED REPRESENTATIVE



APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE June 17, 2025
REPORTS & RECOMMENDATIONS	**AN ORDINANCE TO AMEND ORDINANCE 2024-2649, AN ORDINANCE ADOPTING THE 2025 ANNUAL BUDGET FOR THE GENERAL FUND TO PROVIDE ADDITIONAL PLANNING DEPARTMENT SUBSCRIPTIONS APPROPRIATIONS TO SUPPORT THE UDO ENHANCED GRAPHICS PROPOSAL**	ITEM NUMBER G. 9.

BACKGROUND

The City of Franklin Municipal Code and Unified Development Ordinance are currently hosted online in the eCode360® platform which gives public users the ability to search and share code content and new laws, and additional tools for municipal users (staff), such as adding notes, multicode searching, archive access and code dashboard The City recently adopted a full rewrite of the Unified Development Ordinance (UDO) This Enhanced Graphics Proposal by General Code® is to codify the new UDO into the eCode360 platform and to accommodate the new UDO's illustrations, as well as 2 printed copies

The City currently has a Standard eCode360 subscription ($995 annual fee), this proposal is not changing the annual subscription fee While this proposal is being reviewed, the new UDO is available on the City's website as a pdf document, however, it lacks the tools available in the eCode360® platform

FISCAL NOTE

This budget amendment is necessary to allow appropriations for the UDO Enhanced Graphics and Data Points to be added to the City's website

The City's Fund Balance Policy states that the ratio of year end Fund Balance to current year Expenditures shall target a range between 20-30% Currently, our ratio is ~45% Also, the policy states that Fund Balance will be used to support expenditures that are of a one-time nature and do not require repeated resources to maintain the expenditures In this case, the City has corroborated that this is a one-time expense to allow the UDO enhanced graphics to be published to the City's website

The GL Account associated with this amendment are

Expenditures			
01-0621-5422	Planning Subscriptions	Increase	$7,950

COUNCIL ACTION REQUESTED

Adopt Ordinance No 2025-____, an Ordinance to Amend Ordinance 2024-2649, an Ordinance adopting the 2025 Annual Budget for the General Fund to Provide Additional Planning Department Subscription Appropriations to Support the UDO Enhanced Graphics Proposal

Planning Dept – RM/Finance Dept - DB

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

ORDINANCE NO 2025-_____

AN ORDINANCE TO AMEND ORDINANCE 2024-2649, AN ORDINANCE ADOPTING THE 2025 ANNUAL BUDGETS FOR THE GENERAL FUND TO PROVIDE ADDITIONAL PLANNING DEPARTMENT SUBSCRIPTIONS APPROPRIATIONS TO SUPPORT THE UDO ENHANCED GRAPHICS PROPOSAL

WHEREAS, the Common Council of the City of Franklin adopted the 2025 Annual Budgets for the City of Franklin on November 19, 2024, and

WHEREAS, the UDO rewrite update was approved at the May 6, 2025 Common Council meeting, and

WHEREAS, budget appropriations are needed to support the expenditures related to the UDO update on the website, and

WHEREAS, the Budget Appropriation Units should be adjusted for the above items as listed below, and

NOW, THEREFORE, the Common Council of the City of Franklin does hereby ordain as follows

Section 1 That the 2025 General Fund Budget be amended as follows

General Fund – Fund 01

0621	Planning Subscriptions	Increase	$7,950

Section 2 Pursuant to Wis Stat § 65 90(5)(ar), the City Clerk is hereby directed to post a notice of this budget amendment within fifteen days of adoption of this Resolution on the City's web site

Section 3 The terms and provisions of this ordinance are severable Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, or otherwise be legally invalid or fail under the applicable rules of law to take effect and be in force, the remaining terms and provisions shall remain in full force and effect

Section 4 All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____day of _____, 2025

APPROVED

_____

John R Nelson, Mayor

ATTEST

_____

Shirley J Roberts, City Clerk

AYES ____ NOES _____ ABSENT _____

GENERAL CODE

Enhanced Graphics Proposal

PREPARED FOR:

City of Franklin, Wisconsin

PREPARED BY:

FAYE MOORE

CODIFICATION ACCOUNT MANAGER

fmoore@generalcode.com

800.836.8834

DATE:

June 2, 2025

(Valid for six months)

Table of Contents

Executive Summary

Situation Analysis

Based on discussions with the City of Franklin, General Code® understands that the City would like to support economic growth and serve the public by presenting an online Unified Development Ordinance that is clear, easy to understand and always up to date, making it easier for business and property owners, planners, developers, and constituents to access.

Our Solution

Enhanced Graphics offers zoning specific features like integrated tables, multicolumn layout options, searchable image captions, color coding, and high-quality graphics to create an easy to use Unified Development Ordinance that is visually impactful, simple to maintain and accurately presented in our flexible online platform, eCode360®.

Our *Enhanced Graphics* solution for Franklin includes:

- **Code Analysis and Editorial Work**
  This process will identify conflicts, redundancies, and inconsistencies in the Unified Development Ordinance and incorporate the necessary revisions to ensure that your Code is enforceable and up to date.
- **Enhanced Publishing Services**
  Your Unified Development Ordinance will be published with enhanced media tools designed specifically to accommodate graphically rich Codes.
- **Updated *eCode360* and 2 Print Supplements**
  We will seamlessly integrate your *Enhanced Graphics* Unified Development Ordinance with the rest of your Code, housed in *eCode360*. We will also provide you with 2 copies of your updated Unified Development Ordinance to be included in your printed Code.

Franklin's Investment

A detailed breakdown of the investment and available options can be found on page 6.

Recommended Solution for Franklin

The visual presentation of your Unified Development Ordinance is an important factor in the way your community understands and uses the City's graphically rich Zoning regulations. Knowing this, we created our *Enhanced Graphics* solution, which is designed to incorporate — and, when necessary, enhance — custom graphics, images and tables. Without sacrificing design integrity, your Zoning material will be housed on our innovative *eCode360* platform and seamlessly integrated with the City's entire Code. Additionally, as your Unified Development Ordinance is amended, our team of codification experts can make timely, accurate updates, ensuring that the current version of your Code is always available to your community.

Enhanced Graphics Benefits

Table Support — We keep tables integrated within your Unified Development Ordinance so that users can easily view them in context. By enhancing tables when needed, we can keep them legible, functional and consistent throughout your Code.

Multicolumn Layout — We support a multicolumn layout approach where it makes sense to keep content within a proper section and in close proximity to relevant images. This eliminates the need to jump back and forth between pages to find information.

Searchable Image Captions — Rather than being static elements, image captions are fully searchable—just like the rest of the online Code. This means that words or phrases contained in the caption will appear in your search results.

Color Coding — Color coding is used primarily as a navigational aid. Strategically used in section headers, maps, tables and other elements of your online code, color coding promotes a clear, organized Code structure and serves as a strong visual cue that connects related content and images. This helps the reader easily peruse the Code without confusion.

High-Quality Graphics — We seamlessly integrate high-resolution charts, maps and illustrations with relevant content in your Code to enhance the overall clarity and usability. Once you click on a graphic, an enlarged, high-res version will open that is detailed and easy to read.

Custom Solutions — Every community is unique, so it is important that your originality is fully reflected in your online Unified Development Ordinance. Our proprietary *eCode360* platform allows us to accommodate all special requests you may have so that your Unified Development Ordinance is a carefully crafted solution that meets your community's unique needs.

Our recommended solution includes the following services from *General Code*:

Code Analysis and Editorial Work

The Code Analysis and Editorial Work will include the following:

- Project management of the supplement
- Review of the new legislation and proper placement in the Code
- Removal of repealed or superseded provisions
- Updates to the Table of Contents, schemes, histories, tables, charts, Index, Disposition List, etc.

- Review of statutory citations
- Any conflicts, inconsistencies, issues or questions identified at this point will be brought to the attention of the City for resolution prior to publication
- Insertion of cross-reference and editor's notes, as appropriate
- Creation of instruction page for removing and inserting revised Code pages

Enhanced Publishing Services

Using the source materials described on page 5, we will publish your Unified Development Ordinance with enhanced tools designed specifically to accommodate graphically rich Codes. As a part of the process, our publishing production team will convert your Unified Development Ordinance into our specialized Code database that will enable it to be output in print and posted online in *eCode360*. The work effort for this conversion will depend on the design, complexity, accuracy, completeness and overall size of the documents that are supplied to *General Code*.

Deliverables

Updated *eCode360* Online Code

General Code will update the City's *eCode360* site to include the *Enhanced Graphics* Unified Development Ordinance.

Paper Supplements

General Code will provide 2 copies of your Unified Development Ordinance in an 8 ½-by-11-inch page size to include in your printed Code.

Ongoing Code Maintenance

Once your new Unified Development Ordinance is delivered, the process is not truly over. Your community will change and grow, and ultimately your Unified Development Ordinance will evolve with it. In order to protect your investment and maintain your Code as an accurate and reliable resource, it is important that the City keeps the Unified Development Ordinance up-to-date. *General Code's* supplementation services are designed to make the process easy, fast and accurate.

Scope of Services

Source Materials

Franklin has provided *General Code* with the following documents, which will be used as the source materials for the recodification project:

- A copy of the City's Unified Development Ordinance No. 2025-2675, adopted May 6, 2025

Project Scope

This proposal only considers the legislation listed above, which has been submitted for review and will be included in the scope of this project. The processing, review, and inclusion of any materials not submitted are outside the project scope as proposed and therefore may be subject to additional charges. We request that Franklin set up a process to routinely send any new legislation upon adoption. This additional legislation will be included in the Code up to the point where the editorial work has been completed and will be subject to an additional charge at the end of the project.

Special Considerations

General Code has identified the following specific special considerations that will be addressed by our staff as the project progresses:

- Please note the scope of work is limited to the specified legislation and does not include additional ordinances adopted by the City.
- Please also note that the City is responsible for providing a copy of the adopted City Unified Development Ordinance to be used for the project.
- *General Code* understands that there may be future Unified Development Ordinance enactments that are not included in the scope of this proposal but can be separately considered for inclusion; an estimate may be provided, upon request, at the time of their adoption.
- *General Code* notes that the new Unified Development Ordinance saves from repeal certain portions of the current Unified Development Ordinance. Clarification is needed regarding the disposition of those section of the current Unified Development Ordinance still in effect. We also note that Planned Development District ordinances are currently listed in Division 15-3.0400 with ordinance histories only, but no text.

Investment Details and Authorization

City of Franklin, *Enhanced Graphics*, June 2, 2025

Project Build Price $7,950

***Enhanced Graphics* includes the following:**

- Conversion of Unified Development Ordinance into an XML Document
- Enhanced Presentation of Graphic Content
- Code Analysis
- Editorial Work
- Duplication and Publication of 2 Sets of Supplemental Legislation
- Updated *eCode360*
- Shipping

Performance Schedule

The updated Unified Development Ordinance will ship within 12 to 16 weeks of authorization of this agreement.

Payment Schedule

100% of the total project price shall be invoiced upon shipment of the updated Unified Development Ordinance.

The City of Franklin, Wisconsin, hereby agrees to the procedures outlined above, and to *General Code's* Codification Terms and Conditions, which are available at http://www.generalcode.com/terms-and-conditions-documents/.

City of Franklin, Milwaukee County, Wisconsin

By: _____ Witnessed by: _____

Title: _____ Title: _____

Date: _____ Date: _____

GENERAL CODE, LLC

By: _____ Witnessed by: _____

Title: _____ Title: _____

Date: _____ Date: _____

This document serves both as a proposal and as an agreement. To accept this proposal and delegate authority to *General Code* to administer the *Enhanced Graphics* project, complete the form above, including authorized signatures. A signed copy of this agreement will be mailed back to the City for its records.

Scan and email the completed form to contracts@generalcode.com. You may also return it by mail to General Code, 781 Elmgrove Road, Rochester, NY 14624.

Appendix: Sample *Enhanced Graphics* Screens

4. Allowable uses.

A. The allowable uses in each development zone are as set forth in Table 3-1, Allowed Uses.

TABLE 3-1 Allowed Uses

Use Type (See Definitions)	TC6 Boulevard	TC5 Neighborhood	TC4 Transition	TC3 General	TC2 Edge	TC1 Highway
Animal, pet grooming	•	•				•
Animal, veterinary services	•	•		•		•
Assembly or auditorium, indoor	•	•		•		•
Automotive, fuel sales						
Automotive, service or wash						
Automotive, sales						
Bank	•	•	•	•	•	•
Bank, drive-thru	=	=	•	•	•	•

Building Types Overview

A. Commercial Block

Description

The Commercial Block building type is a small to large-sized structure, typically attached, that provides a vertical mix of uses with ground-floor commercial service or retail uses and upper-floor commercial service or residential uses. Smaller versions of this type make up the primary component of a neighborhood main street, while larger versions make up the primary component of downtown, therefore being a key component to providing walkability.

Allowed Frontage Types

- Shopfront
- Gallery
- Forecourt

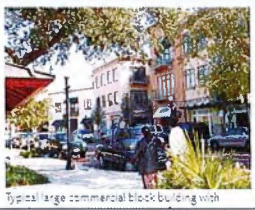
Allowed Appurtenances

- Awnings
- Balconies
- Galleries
- Courtyards

Examples

Large shopfront windows and seating areas in front of the building help to provide for an active streetscape.

A street of commercial buildings of varying heights and widths.



Typical large commercial block building with

SECTION 1-300 Establishment of districts.

SECTION 1-400 **Zoning Map.**

The location and boundaries of the zoning districts established by this Ordinance are set forth on the Zoning Map entitled "Crystal Lake Zoning Map," which, together with all notations, references, and amendments, is adopted by reference and made part of and incorporated into this UDO.

Commentary:

The digital version of the Zoning Map is available on the City's website. To obtain a print version, please contact the City's Community Development Department.

[Amended 6-3-2014 by Ord. No. 7034]

1. Table Support
2. Multicolumn Layout
3. Searchable Image Captions
4. Color Coding
5. High-Quality Graphics
6. Custom Solutions

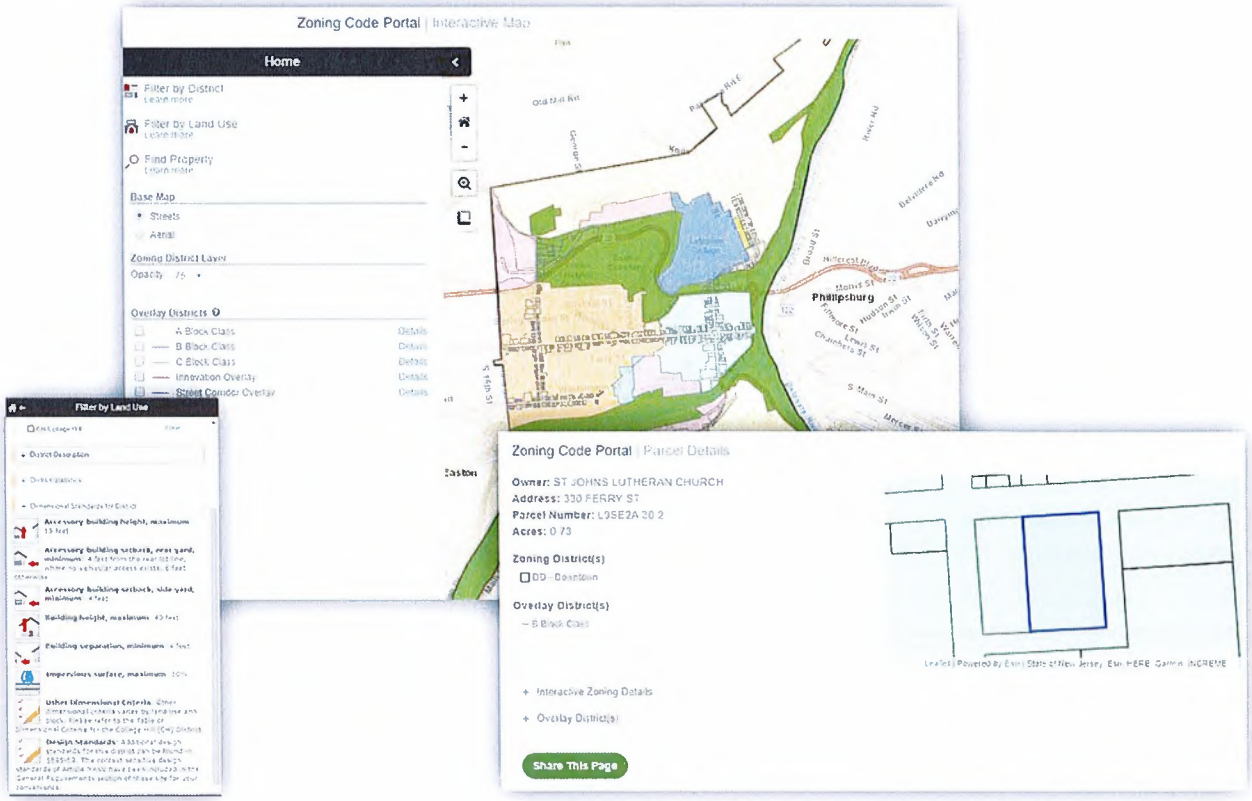
eCode360 MapLink™ powered by ZoningHub™

eCode360 MapLink makes it easier for business and property owners, planners, developers, and constituents to find the information they need in your community's Zoning ordinance by presenting Zoning Code data from *eCode360* in an interactive online map. *MapLink* uses your municipality's existing GIS map information and seamlessly presents data from *eCode360*, so your interactive map clearly and accurately displays your essential Zoning elements. When a Code supplement including a Zoning change is completed and posted to *eCode360*, your Code data is simultaneously updated in *MapLink*, ensuring that users are always working with the most accurate requirements.

Our *MapLink* solution for Franklin includes:

- An Interactive Zoning Map
- Clickable links to your full Zoning Ordinance as published in *eCode360*
- Seamless updates with your Code*

*The adoption of an entirely new Zoning Ordinance shall result in additional setup charges not included in standard supplementation pricing. Prior to adopting a new Zoning Ordinance, contact *General Code* for a detailed estimate.



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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE June 17, 2025
REPORTS & RECOMMENDATIONS	**Resolution Designating an Interim Deputy Treasurer for the City of Franklin**	ITEM NUMBER G. 10.

Background

Effective June 28, 2025, our Deputy Treasurer, Rosanne Zimmerman is retiring after 21 plus years with the City She has served as the City's Deputy Treasurer her entire career at the City of Franklin She began in 2004 as a part-time Deputy Treasurer Rosanne has been a key contributor to our treasury operations and we are grateful for her dedicated service

The Treasury Office is difficult to staff for During ten months of the year normal staffing is required The remaining two months, significantly more staffing is needed to process the activity level during tax preparation and collection Currently, the Treasury Department has 2 part-time employees working roughly 11-12 hours a week, with the 3rd employee working 3/4 time throughout the year at different hours/capacities to ensure coverage within the department Since 2019, the Finance/Treasury Department has operated with 6 73 FTE In 2023, the Finance Department lost a half time employee, which put increased pressure on staff

The Director of Finance/Treasurer has met with both the Finance and Treasury Departments to discuss a smooth transition and further direction of the combined departments At this time, there is no final plan in place, however, some very thoughtful recommendations have been made and are being worked through

The following steps are being considered to enhance operational efficiency, strengthen internal controls, and align the financial goals of the departments

1 Possible organizational restructure with interim coverage The Finance Department has an upcoming retirement of the management role within the next 12-18 months Both management position retirements allow for a consolidation and restructuring of duties to better align the functionality of both departments For the foreseeable future, the Deputy Treasurer responsibilities will be temporarily reassigned to the Staff Accountant (who will become the interim Deputy Treasurer) and other Finance/Treasury staff The Director of Finance/Treasurer is evaluating the needs of the payroll/accounting clerk position who has over 24 years of experience and knowledge in the Finance Department Expanding this position from 30 hours a week to a full-time position in the near future would be extremely beneficial to the restructuring program and provide flexibility to the interim Deputy Treasurer

2 Policy and Compliance Enhancements We are beginning the early phase of strategically working to revise key treasury policies to reflect current regulatory and risk management standards Most importantly, updating the reconciliation process to better align with workflows and time management Also, determining new cash handling protocols with the new Microsoft 365 integration

Looking ahead, this transition is going to take time and patience However, this does provide an opportunity to review and strengthen our treasury and finance department structure While Rosanne's retirement marks the end of an important chapter, it also presents an opportunity for positive transformation within the Treasury Department We will keep the Finance Committee informed as the transition progresses and welcome any input during this process.

Fiscal Note

The Finance Department created a cost analysis and determined that there will be roughly $24,000 excess in the personnel budget with this retirement Funding to cover temporary job pay and additional hours for the part time employees will be considered and remain within budget

*This was discussed with the Finance Committee and they unanimously approve the Director of Finance/Treasurer exploring the opportunity to restructure and designate an interim deputy treasurer

COUNCIL ACTION REQUESTED

Motion to Adopt Resolution No 2025-_____, a Resolution Designating an Interim Deputy Treasurer for the City of Franklin

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO 2025-_____

RESOLUTION DESIGNATING AN INTERIM DEPUTY TREASURER FOR THE CITY OF FRANKLIN

WHEREAS, the City of Franklin requires a standing Deputy Treasurer to oversee cash flow, maintain bank accounts, assist with property tax collection, and provide assistance to the Treasurer, and

WHEREAS, the incumbent Deputy Treasurer will retire on June 28, 2025 after serving the City for over 20 years, and

WHEREAS, a new replacement Deputy Treasurer will not be in place immediately as the Director of Finance/Treasurer embarks on the opportunity for restructuring of both the Finance and Treasury Departments, and

NOW, THEREFORE, BE IT RESOLVED, the Mayor and Common Council of the City of Franklin, Wisconsin, do hereby designate an Interim Deputy Treasurer to fulfil this critical role until a successor is selected or further restricting of the Departments are completed

Resolution introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025

APPROVED

_____
John R Nelson, Mayor

ATTEST

_____
Shirley J Roberts, City Clerk

AYES___NOES___ABSENT___

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE June 17, 2025
REPORTS & RECOMMENDATIONS	RESOLUTION DESIGNATING SIGNATURES FOR CHECKS AND ORDERS PURSUANT TO SECTION 66.0607 WISCONSIN STATUTES	ITEM NUMBER G.11.

Background

US Bank NA is our banking depository The City of Franklin has four accounts there

General Checking
Special Clearances Checking
Property Tax Money Market Checking
Payroll Checking

City policy required three signatures on all checks

The Mayor or Common Council President
The Clerk or Deputy Clerk
The Treasurer or Deputy Treasurer

The recent change in multiple staff members necessitates a change in the notice to our depository bank of the authorized signatories on the accounts The current Deputy Treasurer is retiring at the end of June, and the City needs to designate an interim signor In order to keep the segregation of duties in compliance, the Director of Finance/Treasurer is requesting the Accounting Supervisor be the designated signor in place of the Deputy Treasurer until the full restructure of the Finance Department is complete

Recommendation

That the signatures on the attached resolution be the authorized signors on the US Bank accounts.

COUNCIL ACTION REQUESTED

Motion to approve Resolution No 2025-_____ Designating signatures for checks and orders pursuant to section 66 0607 Wisconsin Statutes

Finance Dept - DB

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO 2025-___

RESOLUTION DESIGNATING SIGNATURES FOR CHECKS AND ORDERS PURSUANT TO SECTION 66 0607 WISCONSIN STATUTES

WHEREAS, US Bank, N A is designated as a public depository for the City of Franklin

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that withdrawal or disbursement from the above-named depository shall be by checks or orders as provided in Section 66 0607 of the Wisconsin Statutes, that in accordance with, all checks and orders shall have three signatures The Mayor or Acting Mayor, the Director of Finance and Treasurer or Accounting Supervisor and the City Clerk or Deputy City Clerk shall be the three signatures and shall be so honored, and

BE IT FURTHER RESOLVED that in lieu of their personal signatures, the following facsimile signatures, which have been adopted by them, as below shown, may be affixed on such checks and orders, that the above-named depository shall be fully warranted and protected in making payment on any check or order bearing such facsimile notwithstanding that the same may have been placed thereon without the authority of the designated person or persons

TITLE/NAME/SIGNATURE	FACSIMILE SIGNATURE
_____ Mayor, John R Nelson	
_____ City Clerk, Shirley J Roberts	
_____ Director of Finance & Treasurer, Danielle L Brown	
_____ Michelle Eichmann, Common Council President when Acting Mayor	
_____ Deputy City Clerk, Margaret Poplar	
_____ Accounting Supervisor, Tom Bakalarski	

BE IT FURTHER RESOLVED that the City Clerk of the City of Franklin is hereby authorized and directed to certify to these Public Depositories the foregoing resolution and that the provisions thereof are in conformity with the Articles of Incorporation and Bylaws of the City of Franklin and to certify to these Public Depositories the names of the persons now holding the offices of Mayor, Acting Mayor, Director of Finance & Treasurer, Accounting Supervisor, City Clerk and Deputy City Clerk and any changes thereafter in the persons holding said offices together with specimens of the signature of such present and future officers, and

BE IT FURTHER RESOLVED that the authority granted to the named officers of the City of Franklin shall continue in full force and effect and these Public Depositories may rely thereon in dealing with such officers, unless and until written notice of any change in or revocation of such authority shall be delivered to these Public Depositories by an officer or director of the City of Franklin, and any action taken by said officers and relied on by these Public Depositories pursuant to the authority granted herein to its receipt of such written notice shall be fully and conclusively binding on the City of Franklin, and

BE IT FURTHER RESOLVED that these resolutions shall be in effect on _____ day of _____, 2025 and continue in force until express written notice of their rescission or modification has been furnished to and received by the Bank, and

BE IT FINALLY RESOLVED that any and all transactions by or on the behalf of the depositor with the Bank prior to the adoption of this resolution be, and the same hereby are, in all respects ratified, approved and confirmed

Passed and adopted by the Common Council of the City of Franklin this _____ day of _____, 2025

APPROVED

_____
John R Nelson, Mayor

ATTEST

_____
Shirley J Roberts, City Clerk

AYES _____ NOES _____ ABSENT _____

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 6/17/2025
REPORTS & RECOMMENDATIONS	**City of Franklin's Community Development Block Grant Program Projects for 2026**	ITEM NUMBER G. 12.

Per Milwaukee County, the timeline for the 2026 Community Development Block Grant (CDBG) applications is as follows:

- June 17-25, 2025: 2026 CDBG Training Sessions with one required training per applicant. This requirement will be met by Department of Administration staff.
- June 27, 2025: 2026 CDBG application becomes available online.
- July 25, 2025: CDBG applications are due by 10 a.m.
- September 2025: Tentative meeting date of Milwaukee County Committee on Community, Environment, and Economic Development where CDBG applicants will be required to present their 2026 applications to the Committee.

2025 CDBG PROJECT ALLOCATIONS

For its 2025 CDBG allocations, the City of Franklin issued a letter of support in the amount of $5,000 to Eras Senior Network, Inc. for their Faith in Action Milwaukee County Program; issued a letter of support in the amount of $3,000 to Oak Creek Salvation Army for its Homelessness Program; applied and received notice of award in the amount of $5,000 for the Franklin Senior Community Health Educational Program (Health Department); and applied and received notice of award in the amount of $65,000 for the 2025 Franklin Home Repair Grant Program.

2026 CDBG APPLICATION SUBMISSION

As a refresher, the Milwaukee County CDBG program has tightened its program parameters to ensure that no more than 15% of project dollars go towards Public Service projects, social service-type programs not involving construction per the federal requirements. Per federal law, the CDBG program focuses on construction-related projects. Note that the County considers those projects that receive a letter of support as using a portion of Franklin's allocation.

The amount of Franklin's allocation and limitations of the funds in relation to Franklin's demographic makeup limits its reasonable application for major construction projects, which is the primary intent of the Federal CDBG program. Our current allocation strategy supports beneficial services and can be very helpful in maintaining a small portion of the City's older housing stock through the Franklin Home Repair Grant Program while targeting CDBG-eligible participants.

For 2026, staff recommends continuing to fund the current Public Service Projects as follows: (1) The Franklin Senior Community Health Educational Program by the Franklin Health Department in the amount of $5,000; (2) the letter of support for the Oak Creek Salvation Army–Homelessness Program in the amount of $3,000; and (3) the letter of support for the Eras Senior Network Faith in Action Milwaukee County Program in the amount of $5,000. If the Common Council agrees, the City will forward letters of support to Eras Senior Network, Inc. and the Oak Creek Salvation Army, and those agencies will then proceed to prepare and submit the necessary 2026 applications to Milwaukee County. Both agencies have confirmed that they will again be applying for 2026 Milwaukee County CDBG funding and greatly thank the City for their continued support for their crucial programs. Note that it is possible that the County could reduce the available funds for the Franklin Public Service projects to approximately $9,000-$11,700, which is 15% of a typical allocation between $60,000-$78,000.

Also, for 2026, staff recommends that the City again apply for funding towards a "Franklin Home Repair Grant Program," as it had applied for and was awarded funding for the years 2018 through 2025. The current 3-year Cooperation Agreement with the County includes language that allows a community to submit proposed projects for funding "and/or have all or some of its allotment for that year applied to the Home Repair Program." The Milwaukee County Home Repair Program is administered directly through Milwaukee County. It grants low-income owner-occupants of single-family homes the ability to make necessary home repairs. Typical repairs include making accessibility accommodations, repairing electrical systems, water/sewer service, and/or porches, and replacing roofs, siding, trim, and/or windows. The application for the Home Repair Grant Program is set up to help as many income-eligible, single-family homeowners in Franklin as possible – with grants being up to one-half the project cost, generally targeted for up to $5,000. This $5,000 amount is flexible and can be modified, increased, or decreased by Milwaukee County depending on how many income-eligible applications are received and the amount of the repairs.

The Franklin Home Repair Grant Program has been doing fairly well. All past Franklin Home Repair funding through 2022 has been used. Applications are being taken for use of the 2023 and 2024 Franklin Home Repair Grant funding. Applications for use of the 2025 Franklin Home Repair Grant funding cannot be processed until the funds are received from HUD, which should be within the next couple of months. Once funding is received, applications can be processed using the 2025 Franklin Home Repair Grant funds.

Staff recommends completing and submitting final 2026 Milwaukee County CDBG applications by the deadline date of July 25, 2025, for the following City of Franklin projects and amounts:

2026 Recommended Franklin CDBG Applications:	**Amount:**
Franklin Senior Community Health Educational Program (Health Department)	$5,000
Eras Senior Network Faith in Action Milwaukee Co. Program (Letter of Support-$5,000)	5,000
Oak Creek Salvation Army–Homelessness Program (Letter of Support-$3,000)	3,000
2026 Franklin Home Repair Grant Program (Remaining amount)	65,000
Total 2026 Franklin Application Submittal	**$78,000**

NOTE: A public hearing by the City of Franklin is not required as the Milwaukee County Board schedules and holds a public hearing on all project recommendations.

COUNCIL ACTION REQUESTED

Motion to authorize the Director of Administration to submit Letters of Support for the Eras Senior Network, Inc. Faith in Action Milwaukee County Program for $5,000 and Oak Creek Salvation Army–Homelessness Program for $3,000; to submit a project application for the Franklin Senior Community Health Educational Program for $5,000; and to submit a project application for a 2026 Franklin Home Repair Grant Program, administered directly through Milwaukee County, for $65,000, by the deadline date of July 25, 2025. (This aggressive deadline date does not allow this item to be held over or tabled to a future meeting date.)

DOA-KH

APPROVAL	REQUEST FOR COUNCIL ACTION	MTG. DATE June 17, 2025
Reports & Recommendations	**A Resolution Authorizing the Installation of a Fence Within the south 20-foot Storm Sewer Easement Upon Lot 140 in Imperial Heights Addition No. 5, being a subdivision of parts of the SW 1/4 of the NW 1/4 of Section 13, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin (8155 S. 42nd St.) (TKN 808 0145 000) (Chad & Jennifer van Dernoot, Applicant)**	**ITEM NO.** Ald. Dist. 5 G. 13.

BACKGROUND

Staff received a request to install a 6-foot cedar fence within the 20-foot Storm Sewer easement at 8155 S. 42nd St. The fence will be installed 8-1/2 feet south from the north property line.

The proposed fence will be encroaching the said drainage easement on 8155 S. 42nd St. See Exhibit C.

ANALYSIS

Staff is agreeable to allow the fence to be installed within the easement if the property owner is fully responsible for repair and/or replacement if the said drainage easement should need to be accessed for improvement or maintenance purposes.

The resolution provides that:

1. The subject fence shall not impede the stormwater drainage way.
2. The property owners, and their successors and assigns, shall keep the fence in good repair.
3. The property owners, and their successors and assigns, shall be responsible for the replacement and/or repair of the fence should the fence need to be removed or damage due to access for improvement or maintenance to the said drainage easement.
4. The City is not responsible for any damage that may occur during or as a result of maintenance purposes needs and/or activities.
5. The property owner(s) and any mortgage with an interest in the property shall agree to and execute the Acceptance set forth on Exhibit A annexed hereto, and the Mortgage Holder Consent set forth on Exhibit B forthcoming, respectively.

OPTIONS

(Subject to completion of Mortgage Holder Consent (Exhibit B)
Approve or Deny

FISCAL NOTE

None

RECOMMENDATION

Resolution 2025-_____ a resolution to authorize the installation of a fence within the 20-foot Storm Sewer easement, upon Lot 140, in the Imperial Heights Addition No. 5 Subdivision (8155 S. 42nd St.) (Tax Key No. 808 0145 000) (Chad & Jennifer van Dernoot, applicant).

Engineering: KAB

Exhibit A

Acceptance

The undersigned, Chad and Jennifer van Dernoot, applicants of the property located at 8155 S 42nd Street, Franklin, Wisconsin 53132, Tax Key No. 8080145000, does hereby agree to, consent to and accepts the terms and provisions of the City of Franklin Resolution No. 2025-____, and that in consideration of the making of such grant to allow the installation of a fence within the public water main easement by the City of Franklin, the undersigned agrees that this acceptance shall be binding upon the undersigned and the undersigned's successors and assigns and that the terms and provisions of the City of Franklin Resolution No. 2025-____, shall run with the land, subject to any amendments thereto and/or any other actions thereto approved by the Common Council of the City of Franklin in the future.

In witness whereof, the undersigned has executed and delivered this acceptance on the 8TH day of June, 2025.

Property owner

By: _____
Chad Van Dernoot

By: Jennifer van Dernoot
Jennifer van Dernoot

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2025 - _____

A RESOLUTION AUTHORIZING THE INSTALLATION OF A FENCE WITHIN THE SOUTH 10-FOOT STORM SEWER EASEMENT UPON LOT 140 IN IMPERIAL HEIGHTS ADDITION NO. 5.
(8155 S. 42ND ST) (TKN: 808 0145 000) (CHAD & JENNIFER van DERNOOT, APPLICANT)

WHEREAS, the Imperial Heights Addn. No. 5 Subdivision Plat prohibits the building of structures within public storm sewer easement, described thereon; and

WHEREAS, Chad and Jennifer van Dernoot, property owners, having applied for an installation of a 6-foot cedar fence, located at 8155 S 42nd St, zoned R-6 Residential, bearing Tax Key No. 808 0145 000, more particularly described as follows:

LOT 140 IN IMPERIAL HEIGHTS ADDITION NO. 5, BEING A SUBDIVISION OF PARTS OF THE SW 1/4 OF THE NW 1/4 OF SECTION 13, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN;

and

WHEREAS, the fence would encroach on the "Storm Sewer Easement" (Exhibit C) located on the north of the property; and

WHEREAS, the "Storm Sewer Easement" restrictions upon the Final Plat of Imperial Heights Addition No. 5 Subdivision and its accompanying restriction of the building of structures is a restriction which was imposed by the Franklin Common Council in its approval of the Final Plat; and

WHEREAS, Wis. Stats. § 236.293 provides in part that any restriction placed on platted land by covenant, grant of easement or in any other manner, which was required by a public body vests in the public body the right to enforce the restriction at law or in equity and that the restriction may be released or waived in writing by the public body having the right of enforcement; and

WHEREAS, the Common Council having considered the owner's request, for the encroachment at the storm sewer easement restriction only so as to allow for the subject fence installation; and

WHEREAS, the Common Council having considered the proposed location of and type of fence to be installed upon the subject property and potential interference with the stormwater runoff.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the installation of the proposed fence of the type and specifications as described and only upon the location as set forth within the plans accompanying the application of Chad and Jennifer van Dernoot, on June ___, 2025 be and the same is hereby authorized and approved and that the "Storm Sewer Easement" restrictions as they would apply to such installation upon the subject property only, are hereby waived and released, subject to the following conditions:

1. The subject fence shall not impede the stormwater drainage way.
2. The property owners, and their successors and assigns, shall keep the fence in good repair.
3. The property owners, and their successors and assigns, shall be responsible for the replacement and/or repair of the fence should the fence need to be removed or damage due to access for improvement or maintenance to the said drainage easement.
4. The City is not responsible for any damage that may occur during or as a result of maintenance purposes needs and/or activities.
5. The property owner(s) and any mortgage with an interest in the property shall agree to and execute the Acceptance set forth on Exhibit A annexed hereto, and the Mortgage Holder Consent set forth on Exhibit B annexed hereto, respectively.

BE IT FURTHER RESOLVED, that the applicant shall further obtain all required permit(s) for the installation of the subject fence and that the subject fence shall be installed pursuant to such permit(s) within one year of the date hereof, or all approvals granted hereunder shall be null and void.

BE IT FINALLY RESOLVED, that the City Clerk be and the same is hereby directed to obtain the recording of this Resolution with the Office of the Register of Deeds for Milwaukee County.

Introduced at a regular meeting of the Common Council of the City of Franklin the _____ day of _____, 2025, by Alderman _____.

PASSED AND ADOPTED by the Common Council of the City of Franklin on the _____ day of _____, 2025.

APPROVED:

_____
John R. Nelson, Mayor

ATTEST:

_____
Shirley J Roberts, City Clerk

AYES _____ NOES _____ ABSENT _____

EXHIBIT C

5-21-13-2 0467

Plat of Survey

SCALE 1" = 30'

JAHNKE & JAHNKE ASSOCIATES INC.

Consultants in Engineering, Planning, Subdivisions and Surveying
711 W. MORELAND BLVD. – WAUKESHA, WISCONSIN 53188
TELEPHONE (262) 542-5797 FAX (262) 542-7686 E-MAIL jjnke917@execpc.com

FOR: HERITAGE CONSTRUCTION RE: PIECH

LEGAL DESCRIPTION: Lot 140, IMPERIAL HEIGHTS ADD'N NO. 5, being a subdivision of a part of the SW 1/4 of the NW 1/4 of Section 13, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

Bench Mark 179.28 (City Datum) Manhole rim at the intersection of South 42nd Street and Forest Hill Drive.

178.7 - Existing elevation

Suggested Residence Grade: First Floor 180.2*

Top of Foundation 179.2*

*suggested grades only

Yard Grade per Grading Plan. 178.7

Existing Top of Foundation 179.22

Garage Opening 178.52

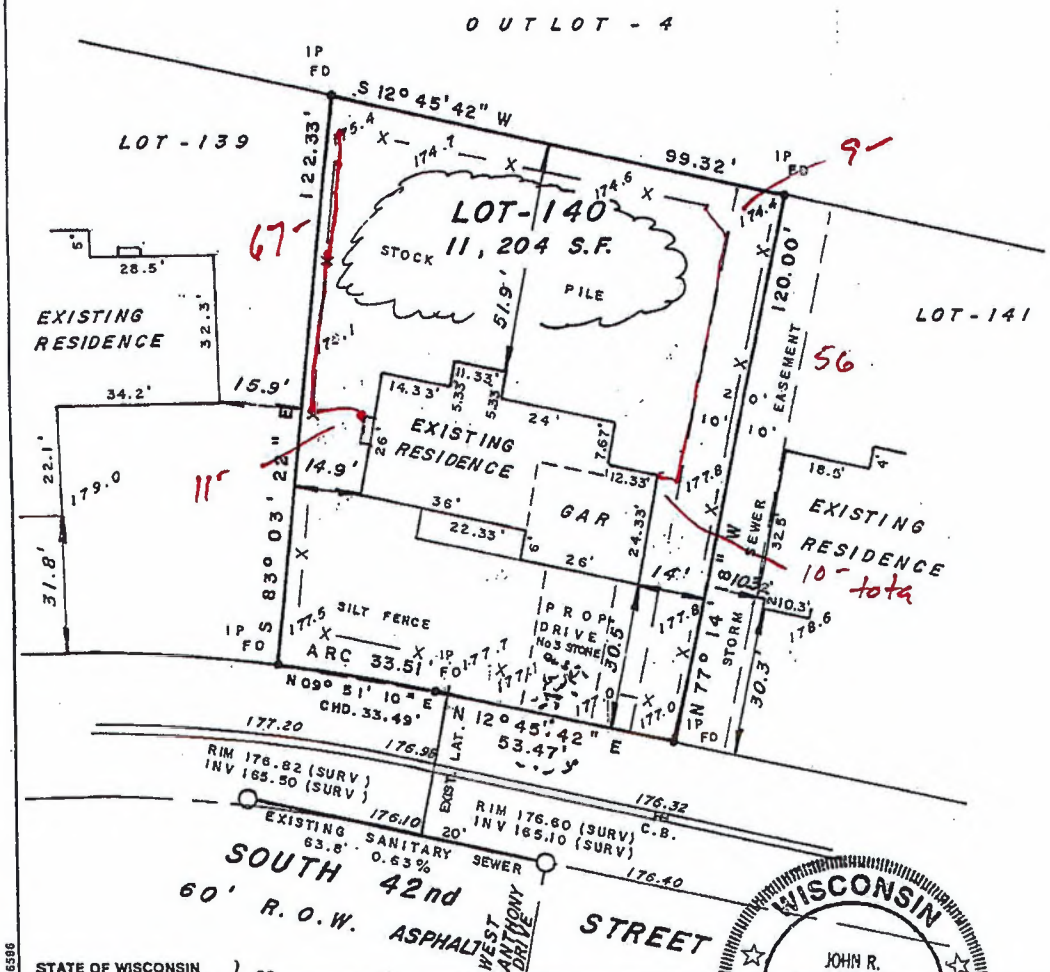
11/28/01 - Basement constructed and located as shown.

NOTK: Expose sanitary sewer lateral before construction to verify gravity flow from the basement.

REFERENCE BEARING: All bearings refer to Grid North of the Wisconsin State Plane Co-ordinate System, South Zone (NAD 1927), with the west line of the NW 1/4 of Section 13, T5N, R21E, having an assumed bearing of N 0°02'44" W.

● Iron pipes found. No pipes set as part of survey.

BASEMENT RECERTIFICATION: I have surveyed enough of the above described property to stake a proposed building and the map shown is a true representation thereof. A complete property survey has not been performed and a waiver has been granted.



STATE OF WISCONSIN } SS.
COUNTY OF WAUKESHA }

WE, JAHNKE & JAHNKE ASSOCIATES INC., DO HEREBY CERTIFY THAT WE HAVE MADE THIS SURVEY AND THAT THE INFORMATION AS SHOWN ON THE ABOVE PLAT OF SURVEY IS TRUE AND CORRECT REPRESENTATION THEREOF.

Revised 7/27/01 (Stakeout) 11/28/01 (Basement survey)

DATED THIS 20TH DAY OF July 20 01

PLAT No. P.S. Milwaukee 1368 BOOK Milw 71 PAGE 18

WISCONSIN JOHN R. STIGLER S-1820 WAUKESHA, WI LAND SURVEYOR

JOHN R. STIGLER – Wis. Reg. No. S-1820

JOHN W. JAHNKE – Wis. Reg. No. S-917

BADGER BLUEPRINT CO. 616586

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 06/17/2025
REPORTS & RECOMMENDATIONS	**RESOLUTION AUTHORIZING THE INSTALLATION OF A FENCE WITHIN THE 30 FOOT PRIVATE PLANTING SCREEN PLAT RESTRICTION, UPON LOT 74 OF WILLOW POINTE ESTATES ADDITION NO. 4 SUBDIVISION (8820 W WHISPERING OAKS COURT) (SUPERIOR FENCE AND RAIL OF MILWAUKEE, APPLICANT)**	ITEM NUMBER G.14.

At its June 5th, 2025 meeting the Plan Commission recommended approval of a resolution authorizing the installation of a fence within the 30 foot Private Planting Screen plat restriction, upon Lot 74 of Willow Pointe Estates Addition No. 4 Subdivision (8820 W Whispering Oaks Court) (Superior Fence and Rail of Milwaukee, Applicant).

The vote was 5-0-1, four "ayes", no "noes" and one absents.

COUNCIL ACTION REQUESTED

A motion to approve Resolution No. 2025-_____, a resolution authorizing the installation of a fence within the 30 foot Private Planting Screen plat restriction, upon Lot 74 of Willow Pointe Estates Addition No. 4 Subdivision (8820 W Whispering Oaks Court) (Superior Fence and Rail of Milwaukee, Applicant).

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO. 2025-____

A RESOLUTION AUTHORIZING THE INSTALLATION OF A FENCE WITHIN THE 30 FOOT PRIVATE PLANTING SCREEN PLAT RESTRICTION, UPON LOT 74 OF THE WILLOW POINTE ESTATES ADDITION NO. 4 SUBDIVISION (8820 W WHISPERING OAKS COURT) (SUPERIOR FENCE AND RAIL OF MILWAUKEE, APPLICANT)

WHEREAS, the Willow Pointe Estates Addition No. 4 Subdivision Plat prohibits the building of structures within the 30 foot "Private Planting Screen" described thereon; and

WHEREAS, Superior Fence and Rail of Milwaukee having applied for a release of the 30 foot "Private Planting Screen" easement restriction upon their property to the extent necessary to install a fence within the restricted area upon the property located at 8820 W Whispering Oaks Court, such property being zoned R-6 Suburban Single-Family Residence District, bearing Tax Key No. 793-0074-000, is more particularly described as follows:

> Lot 74 in WILLOW POINTE ESTATES ADDITION NO. 4, being a subdivision of the Southeast 1/4, Southwest 1/4 and the Northwest 1/4 of the Southwest 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin; and

WHEREAS, the 30 foot "Private Planting Screen" easement restriction upon the Final Plat for Willow Pointe Estates Addition No. 4 Subdivision and its accompanying restriction of the building of structures is a restriction which was imposed by the Franklin Common Council in its approval of the Final Plat; and

WHEREAS, Wis. Stats. § 236.293 provides in part that any restriction placed on platted land by covenant, grant of easement or in any other manner, which was required by a public body vests in the public body the right to enforce the restriction at law or in equity and that the restriction may be released or waived in writing by the public body having the right of enforcement; and

WHEREAS, the Common Council having considered the request for the release of the 30 foot "Private Planting Screen" easement restriction only so as to allow for the subject fence installation, and having considered the proposed location of and type of fence to be installed upon the subject property in conjunction with existing and required landscaping on the property, and that the proposed fence will not be readily visible from the adjoining highway or create any adverse impact upon the aesthetic or buffering purposes of the landscape bufferyard.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the installation of proposed fence of the type and specifications as described and only upon the location as set forth within the plans accompanying the

application of Superior Fence and Rail of Milwaukee filed on May 2, 2025 be and the same is hereby authorized and approved and that the "Private Planting Screen" easement restriction as it would otherwise apply to such installation upon the subject property only, is hereby waived and released.

BE IT FURTHER RESOLVED, that the applicant shall further obtain all required permit(s) for the installation of the subject fence and that the subject fence shall be installed pursuant to such permit(s) within one year of the date hereof, or all approvals granted hereunder shall be null and void.

BE IT FINALLY RESOLVED, that the City Clerk be and the same are hereby directed to obtain the recording of this Resolution with the Office of the Register of Deeds for Milwaukee County.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2025.

APPROVED:

_____
John R. Nelson, Mayor

ATTEST:

_____
Shirley J. Roberts, City Clerk

AYES _____ NOES _____ ABSENT _____

CITY OF FRANKLIN

REPORT TO THE COMMON COUNCIL

Meeting of June 17, 2025

Miscellaneous, Fence installation within planting strip

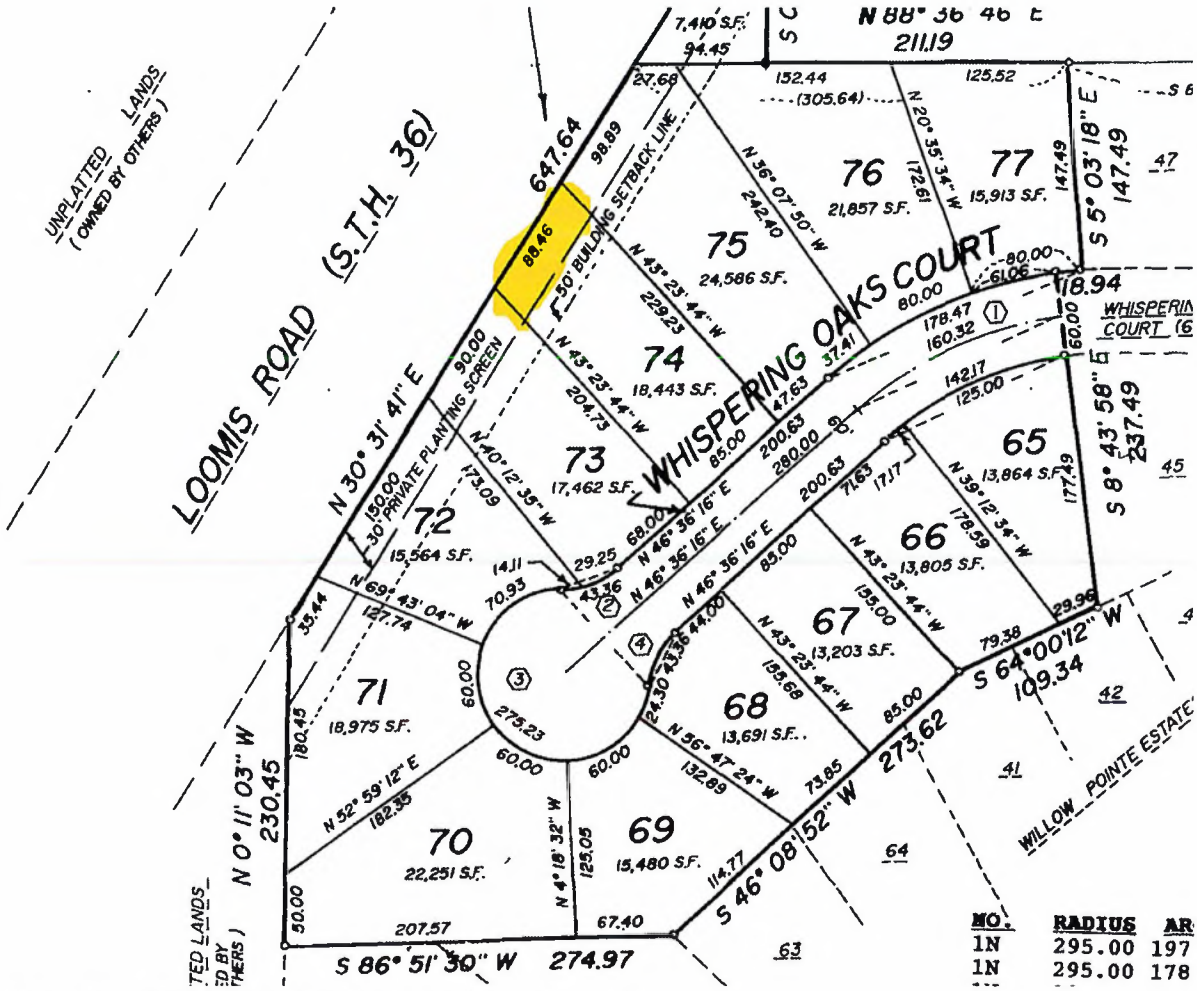
RECOMMENDATION: City Development staff recommends approval with conditions of this request to allow for the installation of a fence within the 30-foot Private Planting Screen upon Lot 74 of the Willow Pointe Estates Addition No. 4 Subdivision.

Project name:	**Superior Fence – Fence installation within planting strip**
Property Owner:	Andersen, Lisa & Randy
Applicant:	Amy Schmidt, Superior Fence and Rail of Milwaukee
Property Address/TKN:	8820 W Whispering Oaks Ct. / 793 0074 000
Aldermanic District:	District 2
Zoning District:	R-6 Suburban Single-Family Residence District
Staff Planner:	Luke Hamill, Associate Planner

Project Description/Analysis

This request is to allow for a fence within the 30 foot "Private Planting Screen" upon Lot 74 of the Willow Pointe Estates Addition No. 4 Subdivision. The Willow Pointe Estates Addition No. 4 Subdivision Final Plat was approved by the Common Council by Resolution No. 94-4126 and contains a 30 foot "Private Planting Screen" for all lots abutting W Loomis Road. The property owner is proposing to install a fence within this area and would like release of the plat restriction.

The applicant is proposing a 6-foot high vinyl privacy fence abutting the rear lot line. This structure would encroach into the planting strip indicated on the plat. It's worth noting that this structure would also encroach into the required DOT 50-foot building setback from the Loomis Road right-of-way line. Wisconsin DOT has reviewed the location and approved of the fence installation, email attached in the packet.



Detail of the Willow Pointe Estates Addition No. 4 plat.
Planting strip in yellow.

Note that the planting strip is located on platted lots 71 through 76 while the berm is located on the Loomis Roadright-of way. Staff acknowledges that the proposed fence would likely be slightly visible from Loomis Road.

Site compliance
City Development staff visited the site on May 29th and didn't notice any site compliance issues with the subject lot.

Staff Recommendation:

City Development staff recommends approval with conditions of this request to allow for the installation of a fence within the 30-foot Private Planting Screen upon Lot 74 of the Willow Pointe Estates Addition No. 4 Subdivision.

Planning Department
9229 West Loomis Road
Franklin, Wisconsin 53132
(414) 425-4024
franklinwi.gov

Franklin WISCONSIN

APPLICATION DATE: 4/22/2025

STAMP DATE: city use only

MISCELLANEOUS APPLICATION

PROJECT INFORMATION [print legibly]

APPLICANT [FULL LEGAL NAMES]	APPLICANT IS REPRESENTED BY [CONTACT PERSON]
NAME:	NAME: Amy Schmidt
COMPANY:	COMPANY: Superior Fence and Rail of Milwaukee
MAILING ADDRESS:	MAILING ADDRESS: N143W6049 Pioneer Rd - Unit E
CITY/STATE: ZIP:	CITY/STATE: Cedarburg, WI ZIP: 53012
PHONE:	PHONE: 262-293-5050
EMAIL ADDRESS:	EMAIL ADDRESS: milwaukee@superiorfenceandrail.com

PROJECT PROPERTY INFORMATION

PROPERTY ADDRESS: 8820 W Whispering Oaks Ct	TAX KEY NUMBER:
PROPERTY OWNER: Lisa Andresen	PHONE: 414-975-4933
MAILING ADDRESS: 8820 W Whispering Oaks Ct	EMAIL ADDRESS: lisamandresen@gmail.com
CITY/STATE: Franklin, WI ZIP: 53132	DATE OF COMPLETION: office use only

APPLICATION MATERIALS

The following materials must be submitted with this application form. *Incomplete applications and submittals cannot be reviewed.

- ☐ This application form accurately filled out with signature or authorization letters (see below).
- ☐ $210 Application fee payable to the City of Franklin
- ☐ Word Document Legal description for the subject property.
- ☐ Three (3) Project Narratives
- ☐ Other information as may be deemed appropriate for the request
- ☐ Email or flash drive with all plans/submittal materials.

Submittal of Application for review is not a guarantee of approval.
Plan Commission, Community Development Authority and/or Common Council review and approval may be required.

SIGNATURES

The applicant and property owner(s) hereby certify that: (1) all statements and other information submitted as part of this application are true and correct to the best of applicant's and property owner(s)' knowledge; (2) the applicant and property owner(s) has/have read and understand all information in this application; and (3) the applicant and property owner(s) agree that any approvals based on representations made by them in this Application and its submittal, and any subsequently issued building permits or other type of permits, may be revoked without notice if there is a breach of such representation(s) or any condition(s) of approval. By execution of this application, the property owner(s) authorize the City of Franklin and/or its agents to enter upon the subject property(ies) between the hours of 7:00 a.m. and 7:00 p.m. daily for the purpose of inspection while the application is under review. The property owner(s) grant this authorization even if the property has been posted against trespassing pursuant to Wis. Stat. §943.13.

(The applicant's signature must be from a Managing Member if the business is an LLC, or from the President or Vice President if the business is a corporation. A signed applicant's authorization letter may be provided in lieu of the applicant's signature below, and a signed property owner's authorization letter may be provided in lieu of the property owner's signature[s] below. If more than one, all of the owners of the property must sign this Application)

☒ I, the applicant, certify that I have read the above page detailing the requirements for Miscellaneous approval and submittals and understand that incomplete applications and submittals cannot be reviewed.

PROPERTY OWNER SIGNATURE: Lisa Andresen	APPLICANT SIGNATURE: Amy Schmidt
NAME & TITLE: DATE: 4/22/25	NAME & TITLE: Amy Schmidt, Contractor/Owner DATE: 4/22/2025
PROPERTY OWNER SIGNATURE:	APPLICANT REPRESENTATIVE SIGNATURE:
NAME & TITLE: DATE:	NAME & TITLE: DATE:

(Rev. 8/2024)

Homeowner: Lisa Andresen

Address: 8820 Whispering Oaks Ct – Franklin, WI 53132

Re: Fence installation proposal

The homeowner is looking to install a privacy fence along the back property line of her property to ensure privacy from the adjacent sidewalk. The fence will run from east-west along the back property line for 88 total LF (as shown on the attached marked survey in **RED**). The fence will be 6'H and is a Cypress colored vinyl fence. The permit for this project has already been submitted to the city of Franklin and is currently under review.

Thank you for your consideration regarding this matter,

Amy Schmidt, Contractor, Owner – Superior Fence and Rail of Milwaukee

Cell: 920-205-1294

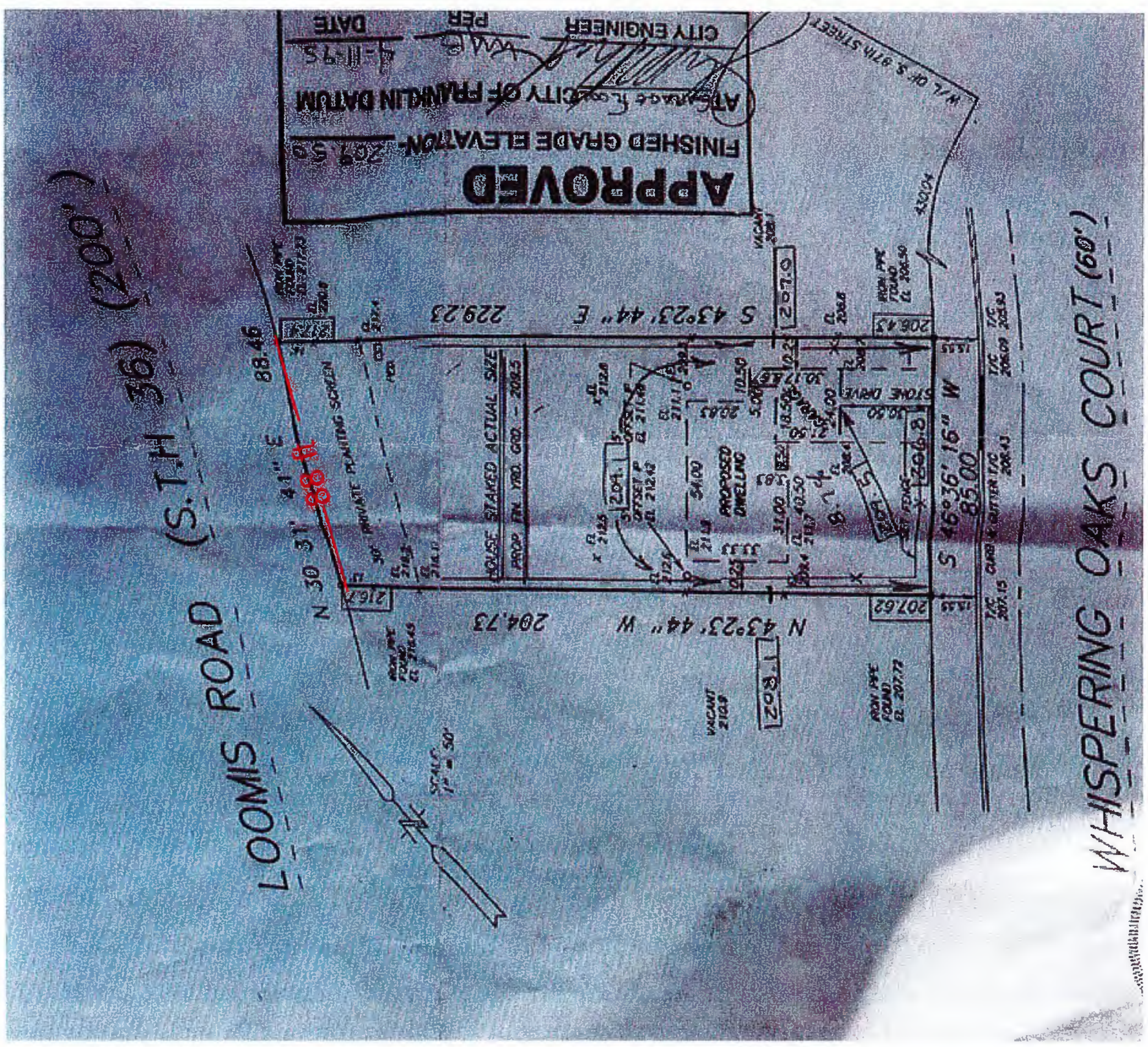
Email: amy.schmidt@superiorfenceandrail.com

Salazar-Oyarce, Jorge - DOT
to me

12:47 PM (21 minutes ago)

Amy,

Please go ahead and install the fence, no documentation needed


LOOMIS ROAD (S.T.H. 36) (200')
WHISPERING OAKS COURT (60')
N 30° 31' 41" E 88.46
S 43°23' 44" E 229.23
N 43°23' 44" W 204.73
S 46°36' 16" W 85.00
PRIVATE PLANTING SCREEN
HOUSE STAKED ACTUAL SIZE
PROPOSED DWELLING
STONE DRIVE
VACANT
SCALE 1" = 50'
W. L. OF S. 97th STREET
APPROVED
FINISHED GRADE ELEVATION
CITY OF FRANKLIN DATUM
CITY ENGINEER
PER
DATE

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 6/17/25
REPORTS AND RECOMMENDATIONS	Public Water Supply to the Village of Raymond The Common Council may enter closed session pursuant to Wis Stat §19 85(1)(e) to deliberate upon information, terms and provisions of the City of Franklin potential provision of public water supply to the Village of Raymond, the potential negotiation of terms in relation thereto, including, but not limited to potential agreement terms for the provision of the public water supply, and potential agreement terms with relation to the public infrastructure work to provide such public water supply, and the investing of public funds and governmental actions in relation thereto, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate	ITEM NUMBER G.15.

COUNCIL ACTION REQUESTED

A motion to enter closed session pursuant to Wis Stat §19.85(1)(e) to deliberate upon information, terms and provisions of the City of Franklin potential provision of public water supply to the Village of Raymond, the potential negotiation of terms in relation thereto, including, but not limited to potential agreement terms for the provision of the public water supply, and potential agreement terms with relation to the public infrastructure work to provide such public water supply, and the investing of public funds and governmental actions in relation thereto, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate

S&W Utility/GB

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Approval	REQUEST FOR COUNCIL ACTION	MEETING DATE 6/17/25
REPORTS & RECOMMENDATIONS	Potential commercial/industrial/manufacturing development(s) and proposal(s) and potential development(s) agreement(s) in relation thereto for, including, but not limited to properties in the southeast corner of South 76th Street and West Rawson Avenue. The Common Council may enter closed session pursuant to Wis. Stat. § 19.85(1)(e), for market competition and bargaining reasons, to deliberate and consider terms relating to potential commercial/industrial/manufacturing development(s) and proposal(s) and the investing of public funds and governmental actions in relation thereto and to affect such development(s), including the terms and provisions of potential development agreement(s) for, including, but not limited to the propert(ies) at the southeast corner of South Oakwood Park Drive and West Ryan Road, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate	**Ald. District 5** **ITEM NUMBER** — G.16.

Department of City Development and Engineering, Administration and Legal Services departments staff will be present at the meeting.

COUNCIL ACTION REQUESTED

A motion to enter closed session pursuant to Wis. Stat. § 19.85(1)(e), for market competition and bargaining reasons, to deliberate and consider terms relating to potential commercial/industrial/manufacturing development(s) and proposal(s) and the investing of public funds and governmental actions in relation thereto and to effect such development(s), including the terms and provisions of potential development agreement(s) for, including, but not limited to properties in the southeast corner of South 76th Street and West Rawson Avenue, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

Economic Development. jr, Legal Services Dept: jw

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE June 17, 2025
REPORTS AND RECOMMENDATIONS	Potential Acquisition of the Property at 9371 West Loomis Road (Tax Key No 801-9995-000, 1 565 acres) and the Property Adjacent Thereto (Tax Key No 801-9996-000, 3 629 acres) for Public Services Use(s) and Public Facilities Purposes The Common Council may enter closed session pursuant to Wis Stat § 19 85(1)(e), for competitive and bargaining reasons, to consider the potential acquisition of the property at 9371 West Loomis Road (Tax Key No 801-9995-000, 1 565 acres) and the property adjacent thereto (Tax Key No 801-9996-000, 3 629 acres)for public services use(s) and public facilities purposes, and the negotiating of the purchase and the investing of public funds with regard to the potential acquisition thereof, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate	ITEM NUMBER G.17.

COUNCIL ACTION REQUESTED

A motion to enter closed session pursuant to Wis Stat § 19 85(1)(e), for competitive and bargaining reasons, to consider the potential acquisition of the property at 9371 West Loomis Road (Tax Key No 801-9995-000, 1 565 acres) and the property adjacent thereto (Tax Key No 801-9996-000; 3 629 acres) for public services use(s) and public facilities purposes, and the negotiating of the purchase and the investing of public funds with regard to the potential acquisition thereof, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate

Dept of Administration KH, Dept of Finance. DLB, Legal Services Dept JW

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APPROVAL	REVISED REQUEST FOR COUNCIL ACTION	MEETING DATE 06/17/2025
LICENSES AND PERMITS	MISCELLANEOUS LICENSES	ITEM 02/NUMBER H.

See attached License Committee Meeting Minutes from the License Committee Meeting of June 17, 2025.

COUNCIL ACTION REQUESTED

Approval of the Minutes of the License Committee Meeting of June 17, 2025.

CITY CLERK'S OFFICE

414-425-7500

License Committee Agenda*
Franklin City Hall Aldermen's Room
9229 West Loomis Road, Franklin, WI
June 17, 2025 – 4:30 p.m.

1.	**Call to Order & Roll Call**	**Time:**		
2.	**Applicant Interviews & Decisions**			
		Recommendations		
Type/ Time	**Applicant Information**	**Approve**	**Hold**	**Deny**
Operator **2025-2026** **New**	**Alyssa Aschaker** Rock Sports Complex/Ballpark Commons			
Operator **2025-2026** **New**	**Teshia Baum** Iron Mike's			
Operator **2025-2026** **New**	**Marangeli Berger** Chili's Grill & Bar			
Operator **2025-2026** **New**	**Lori Coghlan** Crystal Ridge			
Operator **2025-2026** **New**	**Amy Engelmann** Swiss Street Pub & Grille			
Operator **2025-2026** **New**	**Chaimarie Gonzalez** Sam's Club #8167			
Operator **2025-2026** **New**	**Barbara Gudgeon** Kwik Trip #287			
Operator **2025-2026** **New**	**Michael Hecox** Chili's Grill & Bar			
Operator **2025-2026** **New**	**Teresa Kerber** Walgreens #05459			

Operator **2025-2026** **New**	**Danyae Morgan** Kwik Trip #287			
Operator **2025-2026** **New**	**Emiliano Rojas Mendez** Pick'n Save #6360			
Operator **2025-2026** **New**	**Sharon Ryan** Franklin Lioness Club – St Martin's Fair			
Operator **2025-2026** **New**	**Daniel Stadler** Polonia Sport Club			
Operator **2025-2026** **New**	**Linda Steeves** Walgreens #05459			
Operator **2025-2026** **New**	**Devin Watson** Luxe Golf/Dog Haus/Brick			
Operator **2025-2026** **New**	**Pamela Wills** CVS Pharmacy #5390			
Operator **2025-2026** **New**	**Kaitlyn Wiklin** Chili's Grill & Bar			
Operator **2025-2026** **New**	**Avery Yumang** Pick'n Save #6360			
Operator **2024-2025** **New**	**Gabriella Calkins** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Gabriella Calkins** Tuckaway Country Club			
Operator **2024-2025** **New**	**Michael Castillo** Tuckaway Country Club			

Operator **2025-2026** **Renewal**	**Michael Castillo** Tuckaway Country Club			
Operator **2024-2025** **New**	**Taylor Falkner** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Taylor Falkner** Tuckaway Country Club			
Operator **2024-2025** **New**	**Monika Herriges** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Monika Herriges** Tuckaway Country Club			
Operator **2024-2025** **New**	**Peyton Sanders** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Peyton Sanders** Tuckaway Country Club			
Operator **2024-2025** **New**	**Jenna Wesolowski** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Jenna Wesolowski** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Jose Ambriz** Little Cancun Restaurant			
Operator **2025-2026** **Renewal**	**Cathy Anderson** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Nicole Anderson** On Cloud Wine			

Operator 2025-2026 Renewal	**Luke Capstran** Walgreens #05884			
Operator 2025-2026 Renewal	**Antonio Chapa** Pick'n Save #6360			
Operator 2025-2026 Renewal	**Kayla Corona** Chili's Grill & Bar			
Operator 2025-2026 Renewal	**Eric Cottman** Walgreens #05459			
Operator 2025-2026 Renewal	**Rebecca Deall** Pick'n Save #6360			
Operator 2025-2026 Renewal	**John Fenelon** Kwik Trip #287			
Operator 2025-2026 Renewal	**David Fifarek** Rock Sports Complex/Ballpark Commons			
Operator 2025-2026 Renewal	**Aidan Fink** Walgreens #05459			
Operator 2025-2026 Renewal	**Kathleen Galipo** Pick'n Save #6360			
Operator 2025-2026 Renewal	**Jonathan George** Pick'n Save #6360			
Operator 2025-2026 Renewal	**Patricia Greer** CVS Pharmacy #5390			
Operator 2025-2026 Renewal	**Ashley Grube** Tuckaway Country Club			

Operator 2025-2026 Renewal	**Patti Hartung** Walgreens #05459			
Operator 2025-2026 Renewal	**Joseph Heup** Kwik Trip #287			
Operator 2025-2026 Renewal	**Tamarie Honsa** Pick'n Save #6360			
Operator 2025-2026 Renewal	**Brady Ihrcke** Pick'n Save #6431			
Operator 2025-2026 Renewal	**Eric Johnson** Tuckaway Country Club			
Operator 2025-2026 Renewal	**Harpreet Kaur** Pick'n Save #6431			
Operator 2025-2026 Renewal	**Kenneth Keefer** Knights of Columbus Council #4580			
Operator 2025-2026 Renewal	**Eric Kneir** Chili's Grill & Bar			
Operator 2025-2026 Renewal	**Megan Korleski** Walgreens #05459			
Operator 2025-2026 Renewal	**Chad Lehrke** Pick'n Save #6431			
Operator 2025-2026 Renewal	**Elizabeth Lipinski** Walgreens #05884			
Operator 2025-2026 Renewal	**Laurena LoMonte** Walgreens #15020			

Operator **2025-2026** **Renewal**	**Pedro Mata Jr.** Little Cancun Restaurant			
Operator **2025-2026** **Renewal**	**Jan Matuszak** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Jane Michel** Andy's on Ryan Rd			
Operator **2025-2026** **Renewal**	**Janet Miller** Pick'n Save #6360			
Operator **2025-2026** **Renewal**	**Micah Modic** Pick'n Save #6360			
Operator **2025-2026** **Renewal**	**Ann Moehlenpah** Walgreens #05884			
Operator **2025-2026** **Renewal**	**Josefina Mora** Walgreens #05884			
Operator **2025-2026** **Renewal**	**Tricia Peterson** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Allison Planton** Rock Sports Complex/Ballpark Commons			
Operator **2025-2026** **Renewal**	**Emily Porn** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Keith Radtke** The Landmark			
Operator **2025-2026** **Renewal**	**Jazmine Richter** Chili's Grill & Bar			

Operator **2025-2026** **Renewal**	**Angela Rinelli** Crystal Ridge			
Operator **2025-2026** **Renewal**	**Lisandra Rodriguez** Walgreens #05884			
Operator **2025-2026** **Renewal**	**Bobette Sakiewicz** Walgreens #05884			
Operator **2025-2026** **Renewal**	**Ashlyn Sanders** Tuckaway Country Club			
Operator **2025-2026** **Renewal**	**Sherri Sellers** CVS Pharmacy #5390			
Operator **2025-2026** **Renewal**	**Joanna Shebesta** Polonia Sport Club			
Operator **2025-2026** **Renewal**	**Preet Singh** Andy's on Ryan Rd			
Operator **2025-2026** **Renewal**	**Julie Sobanski** Pick'n Save #6360			
Operator **2025-2026** **Renewal**	**Dominique Tarpley** Romey's Place			
Operator **2025-2026** **Renewal**	**Liam Vasquez-Rodriguez** Walgreens #05884			
Operator **2025-2026** **Renewal**	**Katiana Valle** Walgreens #05459			
Operator **2025-2026** **Renewal**	**Salma Wahhab** Walgreens #05884			

Class A Combination Change of Agent 2024-2025	**Walgreens #05884** **Walgreen Co** Marcia Lonzaga, Agent 9527 S 27th St			
Class A Combination Change of Agent 2025-2026	**Walgreens #05884** **Walgreen Co** Marcia Lonzaga, Agent 9527 S 27th St			
Temporary Entertainment & Amusement	**St. Martin of Tours Church** Person in Charge: Abby Wass Event: Scally Brothers Concert Location: 7963 S. 116th St. Event Date: Sunday, 7/13/24			
3.	**Adjournment**	Time:		

*Notice is given that a majority of the Common Council may attend this meeting to gather information about an agenda item over which they have decision-making responsibility This may constitute a meeting of the Common Council per State ex rel Badke v. Greendale Village Board, even though the Common Council will not take formal action at this meeting.

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 6/17/2025
Bills	Vouchers and Payroll Approval	ITEM NUMBER I

Attached are vouchers dated May 30, 2025 through June 12, 2025 Nos. 202981 through Nos. 203166 in the amount of $ 2,019,759.93. Also included in this listing are EFT Nos. 6098 through EFT Nos. 6113, Library vouchers totaling $ 2,946.99, and Water Utility vouchers totaling $ 30,332.06. Voided checks in the amount of $ (14,155.00) are separately listed.

Early release disbursements dated May 30, 2025 through June 11, 2025 in the amount of $ 753,287.94 are provided on a separate listing and are also included in the complete disbursement listing. These payments have been released as authorized under Resolutions 2013-6920, 2015-7062 and 2022-7834.

The net payroll dated June 13, 2025 is $ 470,259.38, previously estimated at $ 444,000. Payroll deductions dated June 13, 2025 are $ 263,890.62, previously estimated at $ 263,000.

The estimated payroll for June 27, 2025 is $ 476,000 with estimated deductions and matching payments of $ 625,000.

COUNCIL ACTION REQUESTED

Motion approving the following

- City vouchers with an ending date of June 12, 2025 in the amount of $ 2,019,759.93
- Payroll dated June 13, 2025 in the amount of $ 470,259.38 and payments of the various payroll deductions in the amount of $ 263,890.62 plus City matching payments and
- Estimated payroll dated June 27, 2025 in the amount of $ 476,000 and payments of the various payroll deductions in the amount of $ 625,000, plus City matching payments.

ROLL CALL VOTE NEEDED

Finance Dept – CH