

Nos. 25-1413 / 1414

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

MARY DOE *et al.*,

Plaintiffs-Appellants/Cross-Appellees,

v.

GRETCHEN WHITMER, Governor of the State of Michigan, and JAMES
GRADY II, Colonel,

Defendants-Appellees/Cross-Appellants.

On appeal from the United States District Court
for the Eastern District of Michigan

**TEN SCHOLARS' AMICI CURIAE BRIEF
IN SUPPORT OF PLAINTIFFS**

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AMICI AND THEIR INTEREST

Amici are 10 scholars across six disciplines whose work includes empirical studies of the effect of laws and analyses of whether a law's factual assumptions align with scientific findings. Amici seek to assist the Court by summarizing the scientific evidence bearing on the factual assumptions underlying Michigan's SORA that is relevant to evaluating the law's constitutionality.¹

This brief was not authored in whole or in part by counsel for a party, nor did such counsel, a party, or any other person or entity make a monetary contribution intended to fund the preparation or submission of this brief.

Counsel for both parties have consented to the filing of this amicus brief.

QUESTION PRESENTED

Is any non-punitive purpose served by a registry needlessly designed to generate public fear of thousands of people who in fact threaten no harm?

¹ Short biographies of amici can be found with the brief filed below. List and Biographies of Amici Curiae, *Doe v. Whitmer*, 751 F. Supp. 3d 761 (E.D.M.I. 2024) (No. 2:22-cv-10209), ECF No. 139-1, PageID.8518-20. All amici below except for Catherine L. Carpenter and Robert D. Lytle remain.

SUMMARY OF ARGUMENT

SORA's purpose is to prevent "criminal sexual acts" by monitoring those posing "a potential serious menace." Mich. Comp. Laws § 28.721a. That purpose requires rules identifying this menacing population. SORA identifies them in two steps. It first assumes that everyone convicted of a sexual offense is a continuing menace, requiring their registration. Second, it sorts registrants into three "tiers" of increasing menace, determined by their registerable offense. Mich. Comp. Laws §§ 28.722(r), 28.722(t), and 28.722(v). A registrant's tier generally determines the duration of his registration requirement: Tier I must register for 15 years, Tier II for 25 years, and Tier III for life. Mich. Comp. Laws §§ 28.725(12) and (13). All adults in Tiers II and III, and some in Tier I, appear on the public website identifying registrants. Mich. Comp. Laws § 28.728(4).

The law assumes that those in Tiers II and III are more likely to reoffend, justifying both their longer registration period and the pervasive monitoring and public shunning encouraged by the public website. These assumptions seemed plausible decades ago when the Legislature first relied on them. But today we know they're both wrong.

In the decades since SORA's adoption, scientific research established that offense-based tiers misidentify the registrants most likely to reoffend and mistakenly assumes reoffense likelihood does not decline for registrants who have been arrest-

free for decades. These two errors combine to cast a registration net so wide that most caught in it are no more likely to commit a sexual offense than any randomly selected man in the population. We also now know that public websites identifying those caught in this overbroad net do not reduce sexual reoffending—and may increase it. In contrast, research suggests that websites limited to the small minority of registrants who are most likely to reoffend, as measured by scientifically validated risk assessment tools, may reduce sexual reoffending.

Advances in knowledge matter. Our honest belief decades ago that we had to quarantine lepers to protect the public health could not justify confining them today.² Neither can we today justify websites encouraging the public to shun nearly everyone who ever committed any sexual offense, no matter how long ago or how law-abiding they have since been, with our once-plausible but now discredited assumption that they advance public safety.

I. SORA tiers registrants by the offense of conviction even though it is completely unrelated to recidivism risk. Other states tier registrants by their score on scientifically validated risk assessment tools.

A 2006 federal law offers a modest financial incentive to states adopting its standards for sexual offense registries.³ Michigan is one of 18 states that chose to

² Frost, *Quarantined for Life: The Tragic History of US Leprosy Colonies*, available at <https://perma.cc/5KHR-7VZT> (last accessed June 29, 2025).

³ Sex Offender Registration and Notification Act (SORNA), 34 U.S.C. §§ 20901-20962.

qualify.⁴ SORNA bases registrant risk tiers on the offense requiring their registration. States rejecting offense-based tiering instead assess reoffense risk individually, and some do so using the same method that insurance companies employ to assess risk of loss: actuarial data with empirically validated predictive power. It is well established that validated actuarial tools are more accurate predictors than human judgments.

For example, the Federal Post Conviction Risk Assessment, an actuarial tool developed by the federal system for assessing the reoffense risk of *all* federal probationers, is more accurate than the judgments of experienced federal probation officers.⁵ The Static-99R is a specialized version of such an actuarial tool that assesses the risk of *sexual* recidivism. Initially developed for the Canadian government, it is the most widely used actuarial tool in the world for assessing that risk.⁶ It is more accurate than expert judgments,⁷ as the federal SMART Office has

⁴ SMART Office, *Substantially Implemented*, <https://smart.ojp.gov/sorna/-substantially-implemented> (last accessed June 25, 2025).

⁵ Oleson et al., *Training to See Risk: Measuring the Accuracy of Clinical and Actuarial Risk Assessments Among Federal Probation Officers*, 75 Fed. Prob. 53 (2011).

⁶ Society for the Advancement of Actuarial Risk Needs Assessment, *Static-99R Users*, <https://saarna.org/static-99/> (last accessed June 25, 2025).

⁷ Hanson & Morton-Bourgon, *The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-Analysis of 118 Prediction Studies*, 21 Psych. Assessment 1, 6-8 (2009).

observed.⁸ The Static-99R has been validated for assessing the sexual recidivism risk of adult males.⁹ Similar tools have been scientifically validated for other offender groups.¹⁰ Even though the Michigan Department of Corrections routinely administers the Static-99R to assess registrants' sexual recidivism risk, Michigan ignores their scores in assigning registrants to risk tiers. It instead relies entirely on SORNA's offense-based tiering system, which repeated studies have found do not predict sexual recidivism.

One study followed 1,789 randomly selected sexual offenders released from prison between 1990 and 2004 in New Jersey, Minnesota, Florida, and South Carolina.¹¹ The researchers identified the conviction-based tier classification that SORNA would have assigned each of them and then calculated the actual ten-year

⁸ SMART Office, *Sex Offender Management Assessment and Planning Initiative*, at 139-140 (2017), available at https://smart.ojp.gov/sites/g/files/xyckuh231/files/-media/document/somapi_full_report.pdf (last accessed July 2, 2025). SMART stands for Sentencing, Monitoring, Apprehending, Registering, and Tracking.

⁹ Hanson et al., *The Field Validity of Static-99/R Sex Offender Risk Assessment Tool in California*, 1 J. Threat Assessment & Mgmt. 102, 104-105, 108 (2014).

¹⁰ See State Authorized Risk Assessment Tools for Sex Offenders (SARATSO), *Risk Assessment Instruments*, <https://saratso.org/index.cfm?pid=1360#jsii> (last visited July 25, 2025) (validating tool for use with juveniles); Eke, Helmus, & Seto, *A Validation Study of the Child Pornography Offender Risk Tool*, 31 Sexual Abuse 456 (2019) (validating tool for men convicted of accessing sexual images of minors). There are no validated instruments for female offenders, but their overall rearrest rate is so low the entire group is low-risk. Marshall et al., *The Static-99R Is Not Valid For Women: Predictive Validity in 739 Females Who Have Sexually Offended*, 33 Sexual Abuse 631 (2021).

¹¹ Zgoba et al., *The Adam Walsh Act: An Examination of Sex Offender Risk Classification Systems*, 28 Sexual Abuse 722 (2016).

recidivism rate for registrants in each tier (defined as a new arrest for a sexual offense). In three of the four states, the recidivism rate was entirely unrelated to the SORNA tier. There was a relationship in Florida, but it was backward: the higher the SORNA tier level, the *lower* the ten-year recidivism rate.¹² They also found that SORNA tiering consistently overestimated recidivism risk as measured by the Static-99R: most of the registrants placed in SORNA's highest-risk Tier III were in one of the two *lowest* of the four risk levels measured by their Static-99R score. A study of New York offenders had similar results, finding *no* correlation between registrants' SORNA tiers and their rearrest rate, for sexual *or* nonsexual offenses.¹³ These results have now been repeated in Michigan, where experts found that its SORNA-defined Tier I registrants have the highest recidivism risk, while its SORNA-defined Tier III registrants have the lowest.¹⁴

Assigning registrants to risk tiers based on their offense is equivalent to assigning tiers randomly. Random determinations of the duration of registration status, or whether registry status is published online, cannot possibly serve any legitimate public purpose. Oregon illustrates the obvious alternative: place registrants in risk categories on the basis of their risk score on the Static-99R (or an equi-

¹² *Id.* at 731.

¹³ Freeman & Sandler, *The Adam Walsh Act: A False Sense of Security or an Effective Public Policy Initiative?*, 21 Crim. Just. Pol'y Rev. 31 (2010).

¹⁴ Expert Report on Class Data at 31, ¶102, *Doe v. Whitmer*, 751 F. Supp. 3d 761 (E.D.M.I. 2024) (No. 2:22-cv-10209), ECF No. 123-6, PageID.3981 ("Class Data").

valently validated actuarial tool).¹⁵ Washington state has a similar system, classifying registrants into one of three registration categories on the basis of a risk assessment that relies primarily on the Static-99R for adult males.¹⁶ Minnesota developed its own actuarial tool using a similar methodology as the Static-99R, and the registrants' score on this test is the principal basis upon which Minnesota registrants are placed into risk tiers.¹⁷ Minnesota's tiers, like those based on the Static-99R, correlate with ten-year recidivism rates – unlike SORNA's offense-based tiers.¹⁸

In sum, risk-based registries in Oregon, Washington, and Minnesota focus on those most likely to reoffend, while offense-based registries like Michigan's focus on those least likely to reoffend.

¹⁵ As explained in *Sohappy v. Board of Parole*, 540 P.3d 568, 575 (Or. App. 2023), Oregon law requires the Department of Corrections to adopt “a sex offender risk assessment tool” to classify sexual offenders based on their likelihood of committing another sex crime, and by regulation the ODOC adopted the Static-99R as its assessment tool for adult males.

¹⁶ Helfgott et al., *Attitudes and Experiences of Registered Sex and Kidnapping Offenders in Washington State* (April 3, 2019), available at <https://www-researchgate.net/publication/360261738> (last accessed June 25, 2025).

¹⁷ Minnesota's system is explained in Duwe & Donnay, *The Impact of Megan's Law On Sex Offender Recidivism: The Minnesota Experience*, 46 *Criminology* 411 (2008).

¹⁸ Zgoba, *supra*, n.11.

II. Scientific studies consistently find that overbroad public websites like Michigan’s do not reduce sexual offense recidivism, while websites limited to registrants scientifically assessed as the most likely to reoffend may.

Scholars employ a variety of methods to measure the real-world impacts of crime control measures for which controlled experiments are not possible. Each method has its own strengths and limitations, which is why different research strategies sometimes yield different results, and no single study can decide the matter. But when multiple studies published in respected peer-reviewed scientific journals by different researchers employing different methods *all reach the same result*, a scientific consensus forms. That has happened with studies assessing the effectiveness of laws like Michigan’s SORA that employ websites not limited to registrants scientifically assessed as high-risk. Such expansive websites *do not reduce recidivism* (sexual or otherwise). Indeed, they may *increase* the recidivism rates, making the public *less* safe. A comprehensive review of the research published by Cambridge University explains this point:

Dozens of studies to date have sought to assess whether and how SORN [Sex Offender Registration and Notification] laws affect sex offense recidivism. Multistate studies—some national in scope—using federal crime data and deploying panel data methods or time-series approaches have found no evidence that notification reduces recidivism and some evidence that it may increase recidivism. In single-state studies, using many different empirical research tools and data sources and examining different measures of sex offense recidivism in different jurisdictions..., researchers from different disciplines, working independently, have essentially failed to detect any evidence that notifi-

cation reduces recidivism.^[19]

The following table describes a few of the dozens of studies the Cambridge analysis considered.

ARTICLE	NATURE OF STUDY	FINDINGS
Agan, <i>Sex Offender Registries: Fear Without Function?</i> , 54 J.L. & Econ. 207 (2011)	Three separate studies: regression analysis of FBI data, 1985 to 2003; assessing registry effects with comparative analysis of reoffense rates in states with and without registries; comparing locations of registrants across DC with locations of sex crimes	Sexual offense rates do not decline after a state adopts registry or public notification law; sexual offenders do not recidivate less in states requiring their registration; census blocks with more offenders do not experience higher rates of sexual abuse
Bouffard & Askew, <i>Time-Series Analyses of the Impact of Sex Offender Registration and Notification Law Implementation and Subsequent Modifications on Rates of Sexual Offenses</i> , 65 Crime & Delinq. 1483 (2019)	Time-series analysis of sexual offending in large Texas city, 1977-2012, to determine impact of registration and later adoption of public notification	No effect of registration or notification on the number of sexual offenses committed by repeat offenders or first-time offenders

¹⁹ Agan & Prescott, *Offenders and SORN Laws*, in *Sex Offender Registration and Community Notification Laws: An Empirical Evaluation* 120 (Logan & Prescott eds., 2021), available at https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1165&context=book_chapters.

Zgoba et al., <i>An Analysis of the Effectiveness of Community Notification and Registration: Do the Best Intentions Predict the Best Practices?</i> , 27 Just. Q. 667 (2010)	Reoffending by NJ registrants prior to public sex offender websites, compared with reoffending by similar group of NJ registrants after the websites established	No sexual recidivism differences between the groups
Ackerman et al., <i>Legislation Targeting Sex Offenders: Are Recent Policies Effective in Reducing Rape?</i> , 29 Just. Q. 858 (2012)	Comparing rate of forcible rape before and after state's adoption of public sex offender website, with controls for other influences on rape rates during these periods	No evidence public sex offender websites reduced the rate of rape offenses
Sandler et al., <i>Does a watched pot boil? A time-series analysis of New York State's sex offender registration and notification law</i> , 14 Psych. Pub. Pol'y & L. 284 (2008)	Time-series analyses to uncover changes in sexual offense arrest rates before and after the enactment of NY's SORN law, using data from 1986 to 2006	Neither registration nor notification reduced registrant reoffending or first-time sexual offending
Prescott & Rockoff, <i>Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?</i> , 54 J.L. & Econ. 161 (2011)	Uses data from National Incident Based Reporting System to model the effect of registration and notification including websites	Notification may cause <i>more</i> crime by thwarting registrant rehabilitation

Tewksbury & Jennings, <i>Assessing the Impact of Sex Offender Registration and Community Notification on Sex-Offending Trajectories</i> , 37 <i>Crim. Just. & Behav.</i> 570 (2010)	Comparing 5-year re-offense rates of Iowa pre-SORN offenders with Iowa post-SORN offenders	Notification has no effect on overall recidivism rates or on recidivism rates of identifiable subgroups
Letourneau et al., <i>Effects of South Carolina's Sex Offender Registration and Notification Policy on Adult Recidivism</i> , 21 <i>Crim. Just. Pol'y Rev.</i> 435 (2010)	6,000 SC men convicted of sex crimes between 1990 and 2004 followed for average of 8.4 years after release	Registration and notification law adopted in 1995 had no effect on reoffending

One study,²⁰ of the dozens reviewed in the comprehensive Cambridge analysis, did find evidence that Minnesota's registry reduced recidivism. But Minnesota, as discussed earlier, relies primarily on an actuarial tool similar to the Static-99R to classify registrants and includes only the 4.5% of registrants in its highest risk tier on its public website.²¹ That study found evidence that a website focusing attention on the small group most likely to reoffend may reduce

²⁰ Duwe & Donnay, *supra*, n.17.

²¹ Only risk level III registrants are included on the Minnesota website, Minn. Stat. § 244.052(4b), and only 1,287 of Minnesota's 28,703 registrants, or 4.5%, are in Tier III. Minn. Bureau of Criminal Apprehension, *Predatory Offender Registry Data*, <https://dps.mn.gov/divisions/bca/bca-divisions/investigative-services/specialized-investigative-services/predatory-crimes/por/por-data> (last accessed July 2, 2025).

recidivism.²² But Michigan employs the opposite approach: its offense-based tiering places 93% on its website for 25 years or life.²³ A likely reason why Michigan's website does not reduce overall recidivism, while Minnesota's does, is the counterproductive impact that Michigan's website, but not Minnesota's, has on the lower-risk registrants. The impact of Michigan's inclusion of them may offset any value from public posting of high-risk registrants.

The public website's adverse impact is much greater than the impact of a registrant's criminal record. A criminal record notes something the individual *once did*. Its force can fade over time. The website is a statement of who the individual *currently is*, as emphasized by the constant updating of registrant photographs, addresses, employment, phone, and vehicle information. Michigan's website stamps every registrant "Compliant" or "Noncompliant," suggesting they remain under

²² Washington also tiers offenders by individualized risk assessment, relying primarily on the Static-99R, and limits its website to the minority of registrants placed in higher-risk Tiers. Williams et al., Presentation at the 2018 Washington State Sex Offender Policy Board Conference, Slide 12 (May 8, 2018) (slideshow available at https://sgc.wa.gov/sites/default/files/public/SOPB/conference2018/-Bezanson_presentation.pdf). In 2005, a Washington state agency found it could not "rule out" the possibility that public notification (along with the concurrent decline in crime rates generally and the concurrent increase in incarceration rates) contributed to the decline in recidivism rates. Wash. State Inst. for Pub. Pol'y, *Sex Offender Sentencing in Washington State* (Dec. 2005), available at <https://www.wsipp.wa.gov/ReportFile/919> (last accessed July 2, 2025). If more sophisticated analyses confirmed this tentative observation, it would support the conclusion of the Minnesota study findings about websites limited to registrants scientifically assessed as higher risk.

²³ Data Report, ECF No. 123-6, PageID.3961.

continuing surveillance because they are all *currently* dangerous. And Michigan, unlike states like California, also puts the registrant's employment address on the website. Even employers who believe in second chances will pause before hiring someone who puts their business on the sex offender website.²⁴ By burdening low-risk registrants' ability to find employment, decent housing, and re-enter civil society, Michigan makes it *more* likely they will reoffend.²⁵ Minnesota's website limits any such impact to the 4.5% of registrants already at the highest reoffense risk.

III. The excessive duration of Michigan's SORA registration terms multiplies the error of offense-based tiering.

The Static-99R measures rearrest risk as of the time the offender is released into the community. But an individual's reoffense risk declines for each year after release that he remains arrest-free. Suppose, for example, recidivism studies tell us that 10% of a particular group of 100 registrants will eventually be arrested again. At the time of their release, we don't know which ten they are. But they identify

²⁴ Forty-five percent of Michigan registrants living in the community reported they were unemployed when the unemployment rate was 4.5%. Data Report, ECF No. 123-6, PageID.3983, ¶¶ 108-110.

²⁵ Released offenders are less likely to reoffend in an environment that provides them with better employment opportunities. Schnepel, *Good Jobs and Recidivism*, 128 Econ. J. 447 (2016) (finding significantly lower reoffense rates for those released from prison during periods with more employment opportunities in low-skill manufacturing and construction jobs); Apel & Horney, *How and Why Does Work Matter? Employment Conditions, Routine Activities, and Crime Among Adult Male Offenders*, 55 Criminology 307 (2017) (offenders have lower offense rates during periods in which they have high-quality employment).

themselves by getting arrested, usually sooner rather than later. If five are arrested within five years, we'll expect only five more arrests from the remaining 95. The rearrest risk for this group of 95 is 5/95, or 5.3%. The group's recidivism risk has declined from 10% to 5.3% five years after release *for those then still arrest-free*.

This decline in the likelihood of rearrest with each year arrest-free after release is the single most well-established finding in criminology,²⁶ and a 2014 analysis by leading scholars of sexual reoffending confirmed that it applies to those convicted of sexual offenses. They combined data from 21 studies that together followed 7,740 adult males convicted of a sexual offense for up to 24 years after release.²⁷ Their rearrest rate declined with arrest-free years at liberty for *both* those initially classified high-risk *and* those classified as low-risk. A follow-up study using the same data quantified the decline by classifying each released male into one of the five Static-99R risk levels and followed each group separately over 25 years post-release.²⁸ Using data showing who was arrested and when, the study recalculated the five-year

²⁶ Blumstein & Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47 *Criminology* 327 (2009); Kurlychek et al., *Long-Term Crime Desistance and Recidivism Patterns*, 50 *Criminology* 71, 75 (2012).

²⁷ Hanson et al., *High Risk Sex Offenders May Not Be High Risk Forever*, 29 *J. Interpersonal Violence* 2792, 2794-95 (2014). Because 16 of the 21 studies providing the data for this paper followed individuals in western countries (most often, Canada) that do not have websites or other methods of public notification, the declining reoffense rates cannot be attributed to online registries.

²⁸ Hanson et al., *Reductions in Risk Based on Time Offense-Free in the Community: Once a Sexual Offender, Not Always a Sexual Offender*, 24 *Psych. Pub. Pol'y & L.* 48, 50 (2018).

rearrest risk (labelled “hazard level”) following each succeeding six-month period.

Below, Figure A²⁹ charts how this rearrest rate declines for each of the risk groups over the 25 years following release for those still arrest-free. The higher the initial risk level, the more rapidly the arrest risk declines for those still arrest-free. The finding makes sense. The higher the initial risk level, the higher the proportion arrested soon after release. Their rapid removal from the group lowers the average risk of those remaining.

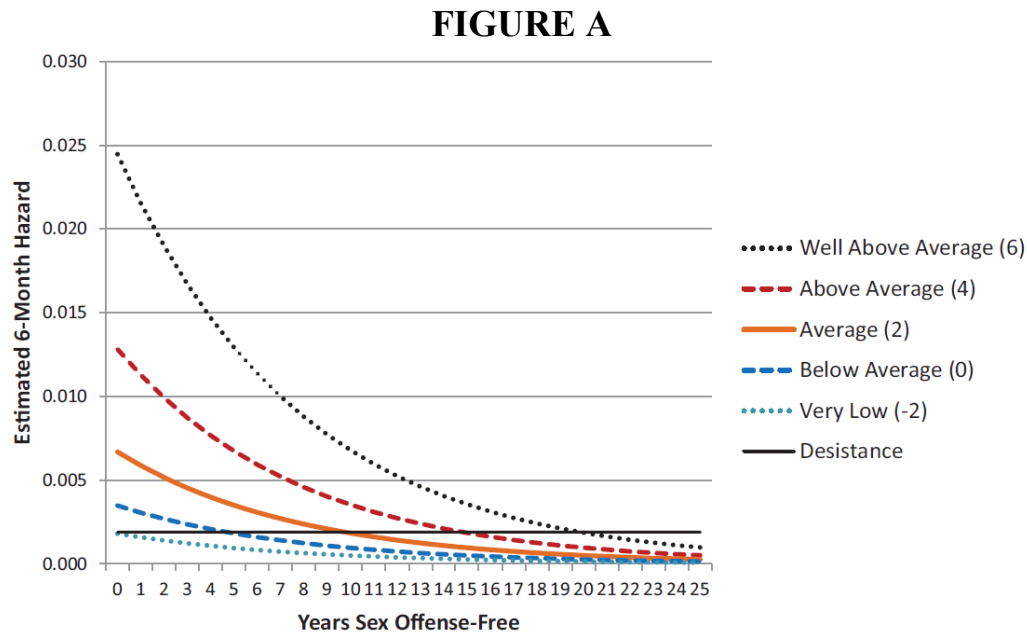


Figure A includes a darker horizontal line near the bottom that represents the “desistance” rate—the proportion of males in the population with no prior felony conviction who will, over their lifetime, be arrested for a sexual offense. That rate

²⁹ Dr. Karl Hanson Rebuttal Report at 16, *Doe v. Whitmer*, 751 F. Supp. 3d 761 (E.D.M.I. 2024) (No. 2:22-cv-10209), ECF No. 123-8, PageID.4191 (“Hanson Rebuttal”).

has been estimated at about 2%.³⁰ We also know that 2% of *nonsexual* offenders are arrested for a sexual offense within five years of their release from custody.³¹ Registrants cannot be the special “menace” to society offered to justify websites encouraging their shunning if they are no more likely to commit a sexual offense than are unregistered males.

As Figure A shows, Static-99R Level I (“very low risk”) registrants are *below* the “desistance” line the day they’re released from custody, while Level II (“below average risk”) reach desistance after about five years, and Level III (“average risk”) after about 10. Even the “above average” and “well above average” registrants (Levels IVa and IVb) reach desistance in 15 years and 20 years, respectively. There is thus no scientific basis for including *any* prior offender on a registry after 20 rearrest-free years following release. Yet Michigan’s offense-based tiering places 93% of those currently living in the community on the public sex offender website for 25 years or for life – decades past the point at which they present no heightened risk of sexual offending.³²

The data from MDOC’s routine administration of the Static-99R allows one to tell that between 17,000 and 19,000 of the 35,000 registrants currently living in

³⁰ Dr. Karl Hanson Report at 14-16, *Doe v. Whitmer*, 751 F. Supp. 3d 761 (E.D.M.I. 2024) (No. 2:22-cv-10209), ECF No. 123-7, PageID.4018-20.

³¹ *Id.*

³² Twenty-two percent are in Tier II and 70% in Tier III. Data Report, ECF No. 123-6, PageID.3961.

the community have passed the point of desistance.³³ They suffer the punishing consequences of public shunning for no public purpose.

IV. The fact that many sexual offenses are unreported has *no* effect on the validity of scientific studies showing laws like SORA do not reduce sexual reoffending.

The District Court expressed concern that the high rate of unreported offenses cast doubt on the scientific evidence showing that SORA does not reduce sexual reoffending. *Doe v. Whitmer*, 751 F. Supp. 3d 761, 808-09 (E.D.M.I. 2024). But scientists obviously know that many sexual crimes go unreported. It's therefore unsurprising that they employ research methods that are unaffected by the low reporting rate. They compare arrest rates, whether between comparable jurisdictions with different laws, or within a single jurisdiction before and after changes in its laws. There is no reliable data on unreported offenses,³⁴ but *whatever* assumption one adopts about the reporting rate for sexual offenses must be applied to the arrest count on *both* sides of these comparisons. That means that *if the arrest rates are the same* with and without registration, then the total offense rates including unreported offenses must also be the same. A finding that the law had no impact on the number

³³ *Id.* at PageID.3970-71.

³⁴ Estimates of unreported offenses typically rely on the National Crime Victimization Survey, which regularly asks samples of those 12 or older whether they reported victimizations they experienced. It consistently finds that *most* violent crimes, not just sexual assaults, are not reported. Tapp and Coen, U.S. Dep't of Just., Bureau of Just. Stat., *Criminal Victimization*, available at <https://bjs.ojp.gov/document/cv23.pdf> (last accessed July 2, 2025).

of those arrested or convicted for sexual offenses reliably indicates it also had no impact on the total number of sexual offenses, including unreported ones. The fact that sex offender websites do not affect the rearrest rate of registrants is thus ample evidence that they do not affect their rate of sexual reoffending overall.

V. The fact that most sexual offenses are unreported has *no* effect on the calculations of the time required for arrest-free registrants to reach desistance.

Registrants reach “desistance” when they are no more likely to commit a new sexual offense than unregistered males. The analysis captured in Figure A uses arrests as the measure for both groups because arrest data exist. One could add an estimate of the number of unreported sexual offenses to the arrest totals, but of course one would then have to add it to *both* groups, as one must use the same measure of “sexual offense” for both. Below, Figure B³⁵ portrays an example of what happens if we do. It assumes that for every arrest counted in Figure A, there are three unreported offenses—a reporting rate of only 25%. The result is that all the lines in Figure B are higher than in Figure A—the horizontal desistance line as well as the descending curves showing how each group’s reoffense rates decline over time offense-free. One can see that each risk group reaches desistance in the same year as in Figure A.³⁶

³⁵ Hanson Rebuttal, ECF No. 123-8, PageID.4192.

³⁶ *Id.* at 4191-92.

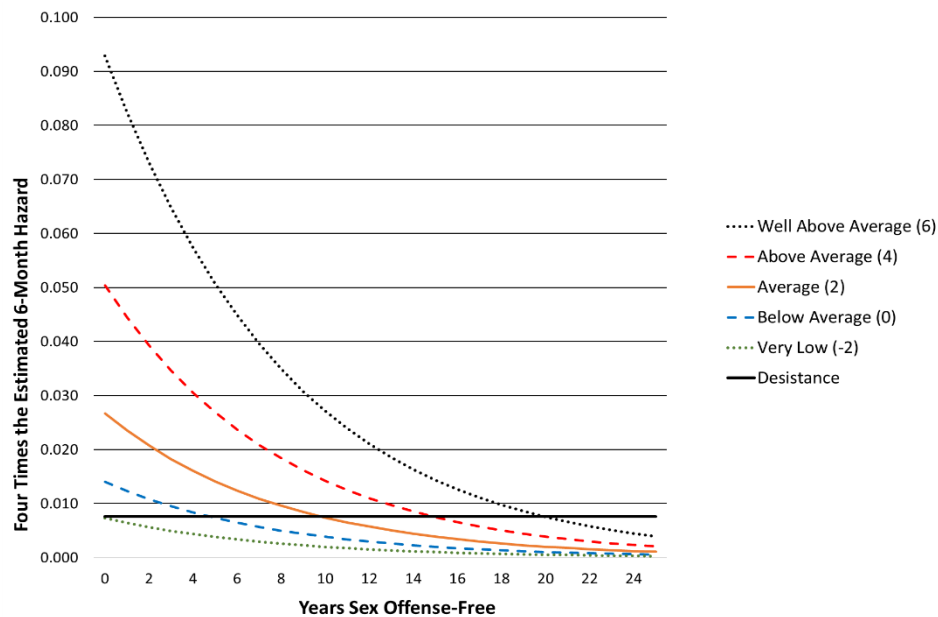
Figure B

Figure B assumes the reporting rate is the same for registrants and non-registrants alike. But actually, police are more likely to learn of and make an arrest for a sexual offense committed by a man *with* a prior sexual conviction than one by a man with no record, and prosecutors are more likely to charge the man with a prior sexual offense conviction.³⁷ That is, sexual offenses committed by prior offenders are *more* likely to be reported than sexual offenses committed by those with no criminal record. In that case, there are fewer unreported offenses to add to the curves representing registrant risk groups than to the desistance line representing sexual offenses in the population as a whole. Thus, arrest-free registrants probably reach

³⁷ *Id.* at 4193. See also Kelley *et al.*, *Do sanctions affect undetected sexual offending?*, 35 Sexual Abuse 624 (2023); Ira Mark Ellman, *When Animus Matters and Sex Offense Underreporting Does Not: The Sex Offender Registry Regime*, 7 U. Pa. J.L. & Pub. Aff. 1, 32-34 (2021).

desistance *sooner* than shown in Figure B. Adjusting risk estimates to reflect the reality of unreported sexual offending is thus likely to *strengthen* the case against SORA's unreasonably long registration terms.

VI. The scientific consensus finding registries like Michigan's ineffective is not contradicted by SMART Office reports.

The District Court quoted a 2017 federal SMART office report describing research on the effectiveness of registries as “mixed” and “inconclusive.” *Doe*, 751 F. Supp. 3d at 792-93 (quoting *Sex Offender Management*, *supra*, n.8). While the entire report is 327 pages, the section discussing this research is only three pages.³⁸ At that length, it cannot be the kind of comprehensive and careful literature review one expects in a peer-reviewed journal or university press, such as the 40-page analysis published by the University of Cambridge, summarized above.³⁹ But in fact, the SMART Office report's *own* characterizations of the 16 studies it describes are entirely *consistent* with the Cambridge conclusion that registries like Michigan's do not reduce reoffending. What is “mixed” about those 16 studies is not the answers they found, but the questions they asked. Those that asked whether registries like Michigan's reduce recidivism all found the same answer: they do not. Summarized

³⁸ The entire discussion of studies on registry effectiveness is at pages 196-198 of the report. The paragraph quoted by the District Court is on page 202; the paragraph's second half appears to refer to material on pages 199-201 that addresses other subjects.

³⁹ Agan & Prescott, *supra*, n.19.

below are the comments in the SMART Office report on each of the 16 studies and the limitations of those studies.⁴⁰

1. Studies one through twelve: The SMART Office report concludes these twelve studies all found no evidence that public notification (which includes public websites), nor registration alone (where notification effects were not examined separately from registration) reduced recidivism rates (or sex crime rates generally, when recidivism rates were not separately examined). Studies one through seven were peer-reviewed studies, eight was self-published, and nine through twelve were government reports.

2. Studies thirteen and fourteen examined the impact of registries in Minnesota and Washington, which tier registrants by individually assessed risk scores that rely on scientifically valid tools like the Static-99R and limit their public website to the small group classified higher risk.⁴¹ These studies provide *no* support for registries like Michigan's that classify by offense and place *most* registrants on their public website. They show only that *other* registry designs may work.

3. Studies fifteen and sixteen are mistakenly described: The SMART Office report's description of Study 15 simply omits the study's finding that there is *no*

⁴⁰ For a more complete examination of the SMART Office Report's discussion, see Ellman, *Studies Referenced in 2017 SMART Office Report*, <http://www.iraellman.com/SMART%20report%20authorities%20Table%20One.pdf>.

⁴¹ See *supra*, nn. 14-18.

evidence that South Carolina’s public website affected sex crime rates. The report’s description of Study 16 omits the authors’ caution about its limited statistical analysis and, more importantly, any mention of the more sophisticated analysis the same authors conducted in their subsequent peer-reviewed publication, which concluded there was *no* evidence “that Megan’s Law is effective in reducing either new first-time sex offenses or sexual re-offenses.”

In sum, the brief discussion in the 2017 SMART Office report surveyed some of the relevant literature and correctly described most of it, but the report’s summary comments, relied upon by the District Court, obfuscate its findings. This is hardly surprising. The SMART Office is the principal government agency monitoring state compliance with the federal government’s SORNA standards, including those requiring public notification and the use of SORNA’s offense-based tiering system.⁴² One would not normally expect a government agency to highlight research casting doubt on the efficacy of the laws its employees are charged with administering.

The District Court also quoted language from a 2022 report that “research is not conclusive about whether SORN laws have mitigated sex offender recidivism” and has “methodological shortcomings.” *Doe*, 751 F. Supp. 3d at 793 (quoting Fed.

⁴² SMART Office, *About SMART*, <https://smart.ojp.gov/about> (last accessed June 25, 2025).

Rsch. Div., Libr. of Cong., *Sex Offender Registration and Notification Act—Summary and Assessment of Research* 2, 19 (2022)⁴³). This report was prepared by the Library of Congress (LOC) under a contract with the SMART Office that requested a review of “research pertaining to SORNA.” The resulting LOC report was as unfocused as the request.

The anonymous authors examined 28 of the 833 articles they found in keyword searches of “a variety of databases and internet search engines.”⁴⁴ The phrases quoted by District Court came from the LOC report’s summary of its four-page section on “recidivism” describing seven of these 28 articles.⁴⁵ The other 21 articles were discussed in other sections of the LOC report addressing topics entirely unrelated to the question of whether registries reduce sexual offending. As it turns out, six of the seven articles discussed in the “recidivism” section are similarly off-topic.⁴⁶

The first of these seven is a “two-page report” released in 2008 by the Association for the Treatment of Sexual Abusers (ATSA),⁴⁷ but ATSA apparently withdrew it (the provided link is dead) after later endorsing the American Law

⁴³ Available at <https://www.ojp.gov/pdffiles1/smart/305231.pdf>.

⁴⁴ Fed. Rsch. Div., *Sex Offender Registration and Notification Act*, at p. 6.

⁴⁵ *Id.* at pp. 62-64.

⁴⁶ For additional descriptions of these articles, see Ellman, *Articles Referenced in 2022 SMART Report*, <http://www.iraellman.com/SMART%20Report%20-authorities%20Table%20Two.pdf>.

⁴⁷ *Id.* at pp. 36, 64.

Institute's 2022 analysis of registry effectiveness (to which we turn below). The second article just describes SORNA's statutory language, and the third describes interviews with juvenile registrants. The fourth and fifth show that SORNA's offense-based tiers are uncorrelated with actual recidivism rates or with recidivism risk as measured by the Static-99R, and the sixth concludes that recidivism rates for juvenile sexual offenders are so low that it is not possible to measure any impact the registry might have on them. The seventh, and only article on point, is a Washington state agency's review of studies on registry effectiveness which concludes that there is some evidence that Minnesota's and Washington's risk-based tiers and limited websites may reduce recidivism, but no evidence that any other state's does.

Thus, the LOC report's summary statement, relied upon by the District Court (that articles addressing the effectiveness of SORN laws in mitigating sexual recidivism have "methodological shortcomings") is, at best, bizarrely inapt. Three of the seven could not have "methodological shortcomings" because they presented no data and thus had no method. Three others did present data—but not on the question of whether registries reduce sexual recidivism. The seventh did present data on that question—but only for Minnesota and Washington, which reject SORNA's offense-based tiering and instead use individual risk assessments and limit their websites to a minority of registrants. The report's authors, inexperienced in this field, were

apparently unaware of the crucial respects in which SORN laws vary. The report is thus unworthy of any reliance by this Court or the District Court.

It's not that competent and informed reviews of the relevant literature are unavailable. The previously discussed Cambridge analysis is one. A second is the American Law Institute's analysis that, as previously noted, was endorsed by ATSA. The highly respected ALI has no investment in any particular conclusion. Its 1962 Model Penal Code (MPC) was adopted in whole or in part by more than half the states.⁴⁸ In 2022, the ALI updated the MPC's article on Sexual Assault and Related Offenses, adding provisions on sexual offender registries (which did not exist in 1962). The newly added Section 213.11(H)(1)(a)(i) states the Institute's conclusion that registry information should be accessible only to law enforcement personnel, "to aid in the investigation of a specific criminal offense." It entirely bars public listings of registrants, or of any information about them.

The ALI's lengthy "deliberative process ensures that every issue receives a full airing of viewpoints and that the final product will represent the considered scholarship, experience, and judgment of the ALI as a whole."⁴⁹ Specially appointed expert advisors—judges, prosecutors, defense attorneys, and scholars—formed the

⁴⁸ Kadish, *Fifty Years of Criminal Law: An Opinionated Review*, 87 Calif. 945, 949 (1999).

⁴⁹ A.L.I., *Frequently Asked Questions*, <https://www.ali.org/faq> (click "Who works on ALI projects?") (last visited July 8, 2025).

official Advisers and Consultative Groups that regularly review drafts of all ALI projects. The Council of the ALI that approved these 2022 provisions on the registry included Justices on the Arizona, California, Missouri, and Texas Supreme Courts as well as ten judges serving on United States Courts of Appeals.⁵⁰ Registry provisions were first discussed in March of 2013, nine years before final adoption.⁵¹ Objections to the registry provisions from the Department of Justice, a group of state Attorneys General, and the National Center for Missing and Exploited Children led to special meetings between all three groups and the Project's Reporter. As explained in the official Reporters' Memorandum:

None of the objections raised with us was more forcefully pressed than these groups' support for a public website listing persons who have been convicted of sexual offense[s] and virtually unrestricted public access [T]hese discussions offered valuable insight into practical considerations worth taking into account. Yet in the end, the points raised . . . did not persuade us to overturn the previous, considered judgment, based on extensive research and wide consultation with other experts by the Reporters, the Council, and the membership, which has led to our conclusion that these public-access policies are unjust and counterproductive, even in terms of the public-safety goals they purport to serve.^[52]

⁵⁰ A.L.I., *2020-2021 Annual Report*, pp. 6-7, available at https://www.ali.org/sites/default/files/2024-12/2020-2021_annual_report.pdf.

⁵¹ For an overview of the project's history, see A.L.I., *Model Penal Code: Sexual Assault and Related Offenses*, <https://www.thealiadviser.org/sexual-assault/> (last visited June 10, 2025).

⁵² Schulhofer, Reporters' Memorandum to Tentative Draft No. 6 (2022), at p. xiv, available at <https://www.thealiadviser.org/sexual-assault/reporters-memorandum-for-model-penal-code-sexual-assault-and-related-offenses-tentative-draft-no-6/> (last accessed June 25, 2025).

In short, Section 213.11H's highly motivated opponents couldn't offer any evidence that offense-based sexual offender websites contribute to public safety. They couldn't because there is no such evidence. That fact helps explain why "public access to registry information is virtually unheard of outside the United States."⁵³ The Department of Justice⁵⁴ and scholars here and abroad⁵⁵ have reached the same conclusion.

CONCLUSION

Some registry systems may contribute to public safety, but Michigan designed SORA to ensure it does not. Michigan fills its website with low-risk registrants who have been arrest-free for decades and are no more likely to offend than unregistered males, and designs the registry to maximize barriers to registrants becoming productive and law-abiding. Punishment is its only purpose.

⁵³ Corda & Schulhofer, *Sex Offense Registries in Europe and Around the World*, The ALI Adviser (December 9, 2020), available at <https://www.thealiadviser.org/sexual-assault/sex-offense-registries-in-europe-and-around-the-world/>.

⁵⁴ SMART Office, U.S. Dep't of Just., *Global Survey of Sex Offender Registration and Notification Systems* 17-22 (2016), available at <https://smart.gov/pdfs/global-survey-2016-final.pdf> (last accessed July 8, 2025).

⁵⁵ Thomas, *The Registration and Monitoring of Sex Offenders: A Comparative Study* (2011); Jacobs & Larruri, *Are Criminal Convictions a Public Matter?: The USA and Spain*, 14 *Punishment & Soc'y* 3, 12-14 (2012); Griffin & Blacker, *Megan's Law and Sarah's Law: A Comparative Study of Sex Offender Community Notification Schemes in the United States and the United Kingdom*, 46 *Crim. L. Bull.* 987 (2011); Napier et al., *What impact do public sex offender registries have on community safety?*, in *Austl. Inst. of Criminology, Trends & Issues in Crime and Criminal Justice* (Issue 550, 2018).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Drew O. Walbeck, certify that this document contains 6,416 words in compliance with Fed. R. App. P. 32(a)(7)(B) and 29(a)(5).

/s/ Drew O. Walbeck

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