



MICHIGAN’S SEX OFFENDERS REGISTRATION ACT:

**UPDATES ON THE LAW AND
LEGAL CHALLENGES**

September 13, 2021

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A. Introduction: What is Happening with the Lawsuits and the New Law

There have been several recent developments around Michigan's Sex Offenders Registration Act (SORA). The prior version of SORA was found to be unconstitutional by the federal Sixth Circuit Court of Appeals in the *Does #1-5 v. Snyder (Does I)* lawsuit, the federal district court in the *Does #1-6 v. Snyder (Does II)* class action lawsuit, and the Michigan Supreme Court in *People v. Betts*. The legislature passed a new version of SORA that went into effect on March 24, 2021.

This packet is designed to help registrants understand these developments. It provides an overview of how the legal cases and new law relate to each other, explains what the new law requires, sets out what can and cannot be prosecuted under the old law, describes defenses to prosecutions under the new law, and provides a preview of upcoming litigation challenging the new law.

1. What is happening with the new law, and how does that relate to the *Does I*, *Does II* and *Betts* court cases?

In response to lawsuits challenging SORA, the legislature has passed a [new law](#) which went into effect on March 24, 2021.

THE COURTS HAVE NOT YET DECIDED WHETHER THE NEW SORA LAW IS CONSTITUTIONAL. THE *DOES I*, *DOES II* AND *BETTS* CASES WERE ABOUT THE OLD LAW. THE STATE CAN THEREFORE MAKE YOU FOLLOW THE NEW LAW UNTIL THERE ARE COURT DECISIONS ABOUT THE CONSTITUTIONALITY OF THE NEW LAW.

The American Civil Liberties Union of Michigan (ACLU) and the Michigan State Appellate Defender Office (SADO)¹ do not think the new law is constitutional. We believe that the new law has done little to fix Michigan's bloated and ineffective registry and, in some ways, has made the problem worse. The ACLU and partners will be challenging the new law through a new class action lawsuit. We know it is extremely frustrating that after years of litigation registrants must still wait for the results of yet another lawsuit. But please understand that the *Does I*, *Does II*, and *Betts* decisions all have important implications for challenges to the new law. They are building blocks towards comprehensive SORA reform. Please be patient. It takes time to develop a strong legal challenge. We will provide updates as they are available.

Challenges to the new law can also be brought as a defense to criminal prosecutions under the new SORA. This packet includes information about how you can defend against a prosecution under the new law.

2. What happened in the *Does #1-6 v. Snyder (Does II)* lawsuit?

[Does II](#) is a federal class action lawsuit challenging SORA. If you are required to register as a sex offender in Michigan, you are automatically part of the case.

In an earlier lawsuit ([Does I](#)) brought for six registrants, the Sixth Circuit Court of Appeals [ruled](#) that it is unconstitutional to apply SORA's 2006 and 2011 amendments retroactively, and the district court said that some other parts of SORA are unconstitutional. In the *Does II* case, the district court in a [decision](#) on February 14, 2020, and an amended [final judgment](#) on August 26, 2021, applied those same rulings to all Michigan registrants. The Court ruled that the old SORA violated the Ex Post Facto Clause—which prohibits retroactive punishment—for people whose last registrable offense was committed before the 2011 amendments, or July

¹ SADO provides representation for indigent people appealing their criminal convictions. SADO must be appointed by the local circuit court to represent someone.

1, 2011.² The Court also ruled that the parts of the old SORA preventing registrants from living, working, or “loitering” within 1,000 feet of school property, and certain reporting requirements, were unconstitutional. Finally, the Court made clear that registrants can be prosecuted under the old SORA only if they knowingly violated the law, meaning that registrants cannot be prosecuted for unintentional or mistaken failures to comply.

However, the district court decision in February 2020 did not go into effect right away. The court gave the legislature time to pass a new law. Then, on April 6, 2020, the district court issued an [interim order](#) preventing the state from enforcing any registration, verification, school zone, and fee violations of SORA during the public health crisis caused by the COVID-19 pandemic.

The amended [final judgment](#) affects whether registrants can be prosecuted for past failures to comply with the old SORA. The district court reaffirmed its previous rulings that (1) the old SORA cannot be applied at all to anyone whose underlying sex offense(s) occurred before July 1, 2011, and (2) the unconstitutional parts of the old law cannot be enforced against anyone. The final judgment also incorporates the interim order, confirming that the old SORA’s registration, verification, school zone, and fee provisions cannot be enforced between February 14, 2020, and March 24, 2021. **As a reminder, the final judgment does not address the new version of SORA.**

3. What happened in the Michigan Supreme Court?

In addition to the federal cases, the Michigan Supreme Court in July 2021 decided in [People v. Betts](#) that the old SORA cannot be retroactively applied to those individuals whose last registrable offense was committed before the 2011 SORA amendments. That decision found that many aspects of the old SORA resembled punishment, and that the unconstitutional parts of the law cannot be separated from the constitutional parts. The *Betts* decision, like the *Does II* decision, means that the old version of SORA cannot be applied retroactively and is void for pre-2011 registrants. **Like the *Does II* decision, the *Betts* decision did not address the new SORA.** However, the language of the decision suggests there are also serious constitutional problems with the new SORA.

B. The New SORA

1. How is the new SORA different from the old SORA?

The ACLU and SADO do not believe the new law solves the constitutional problems with SORA. It remains a conviction-based law, it still has a three-tier system, and it does not change the 15-year, 25-year, and lifetime reporting requirements. It continues the retroactive extension of pre-2011 registrants’ registration terms (e.g., lengthening the 25-year registration period to life). It continues to require extensive reporting of all sorts of information, often within three business days and in-person. Tier II and III registrants remain on the public registry. (Tier I registrants remain in a law-enforcement-only database.) The public registry no longer lists the tiers, but can now include posting of a person’s email and internet information. There is no individualized review nor any path off the registry in most cases. In other words, the basic structure of SORA remains unchanged.

While we are very disappointed with the new law, it does contain three important wins for registrants that we would not have gotten but for the lawsuits. First, it eliminates the “school exclusion zones.” Under the new law, it is no longer a crime for registrants to live, work or “loiter” within 1,000 feet of a school. (Parole,

² Although the opinion uses April 12, 2011 as the date of those amendments, because the majority of the amendments were effective July 1, 2011, the Court’s amended final judgment uses July 1, 2011 as the effective date.

probation, and similar restrictions can still apply.) Registrants are now allowed under state law to go to their children’s and grandchildren’s school events, although schools can make their own policies.

Second, the new law makes clear that no one can be prosecuted for an unintentional or mistaken violation of SORA. Under the new law, the prosecution must prove that the violation was “willful” before convicting someone of violating SORA. This could help you if you are prosecuted for violating a part of SORA you do not understand.

Third, the new law removes from the registry certain people whose offenses are later expunged, set aside, or who successfully complete a term of supervision under the Holmes Youthful Trainee Act. If you no longer have to register, your registration information should be removed from both the law enforcement database and the public internet website.

There are some other smaller changes, as described below.

2. I received a notice about the new law, but I don’t understand what I’m supposed to do.

The Michigan State Police (MSP) sent out [notices](#) to non-incarcerated registrants about the new law. The notices are very confusing. Many local police officers do not understand the new law and are providing incorrect information. Some things about the new law are still unclear, but this update provides the best information we have right now.

3. My registrable offense occurred before July 1, 2011. Do I still have to register under the new SORA?

Yes. The decisions in *Does II* and *Betts* do not bar enforcement of the new law and you must register.

4. When do I have to report under the new SORA?

Like the old law, the new SORA requires regular in-person reporting. Some law enforcement agencies are changing the days and hours when you can report. Call the law enforcement agency where you normally report to find out when they are open and if you need an appointment.

If you are a **Tier I registrant**, you must report once a year during your month of birth.

If you are a **Tier II registrant**, you must report twice each year according to the following schedule:

Birth Month	Reporting Months
January	January and July
February	February and August
March	March and September
April	April and October
May	May and November
June	June and December
July	January and July
August	February and August
September	March and September
October	April and October

November	May and November
December	June and December

If you are a **Tier III registrant**, you must report four times each year according to the following schedule:

Birth Month	Reporting Months
January	January, April, July, and October
February	February, May, August, and November
March	March, June, September, and December
April	April, July, October, and January
May	May, August, November, and February
June	June, September, December, and March
July	July, October, January, and April
August	August, November, February, and May
September	September, December, March, and June
October	October, January, April, and July
November	November, February, May, and August
December	December, March, June, and September

5. What information do I have to report when I go to register?

The information you must report is similar to but not exactly the same as under the old law. The law is very complicated, so if you are unsure about what information you must report, ask when you go to register.

The basic information you must provide is:

- Your legal name and any aliases or other names.
- Your social security number and any other social security numbers you have used.
- Your date of birth and any other date of births you have used.
- Your address. If you are homeless, you can list the city, township, or village where you spend most of your time.
- The name and address for any temporary residence if you leave your home for more than seven days, and the dates you will be at the temporary residence.
- The name and address of each of your employers. If you lack a fixed employment location, you can list the general areas where you work and the normal travel routes you take during your employment.
 - **NOTE – Because the law is unclear about whether you must report volunteer work, if you volunteer, check when you register whether you must report it.**
- The name and address of any school you attend or any school that has accepted you that you plan to attend.
- All telephone numbers registered to or used by you, including your home, work and mobile numbers.
 - **NOTE – Because this requirement is very broad and unclear, check when you register about what you should report.**
- All electronic mail addresses and internet identifiers registered to or used by you:

- **NOTE – Because this requirement is very broad and unclear, check when you register about what you should report.**
- **NOTE – This requirement does not apply if your offense was committed before July 1, 2011.**
- Your license plate number and a description of any vehicle owned or operated by you.
- Your driver license number or state personal identification card number.
- Your passport and other immigration documents.
- All occupational and professional licensing information.

Your registration file also includes a brief summary of your convictions, a complete physical description, a photograph, and copies of your fingerprints and palm prints.

6. How and when do I report changes to my information?

The new SORA law continues to require that when certain information changes, you must update that information **within three business days**. The new law allows the Michigan State Police more flexibility in deciding how changes in information are reported. Unfortunately, the notice sent by the MSP says that most changes must still be reported in person.

Changes you must report in person within three business days:

- Residence changes (your home address), including if you move to another state;
- Employment changes (if you get a new job or stop working at a job; it is unclear in the law whether this covers volunteer work, but MSP says that it does);
- Changes in enrollment as a student in higher education (including if you study at a different location or if you stop your enrollment); and
- Name changes.

Changes to where you live, work, attend school, or to your name **MUST** be reported in person. You cannot mail in a form to report these changes.

Changes you can report in person, by first class mail or by dropping off the required form:

- Changes in vehicle information;
- Changes to telephone numbers; and
- Changes to electronic mail addresses or internet identifiers. (The requirement to report electronic email addresses and internet identifiers only applies to individuals with offenses on or after July 1, 2011.)

Changes to your vehicle, phone or internet information can be reported in person, or you can use Form RI-004A, Michigan Sex Offender Registry Mail-In Update. You can get the form at www.Michigan.gov/MSPforms. If you use the form, you can drop it off or you can mail it. If you mail it, make sure to send it to the local police station or MSP post where you register. Make sure your letter is postmarked no later than three business days after the information changed. **Keep a copy of the form for your records and write down when and where you mailed it.**

Reporting travel or time spent away from home:

- If you are going to be away from your home address for more than seven days, you must report your travel, including the name and address of where you will stay and the dates you will be away. You can report **in person, by first class mail, or by dropping off the required form within three business days**.
- If you are traveling outside the U.S. for more than seven days, you must report **in person at least 21 business days** before traveling to another country.

Reporting moves out-of-state or internationally.

- You must report **in person at least three business days** before moving to another state; and
- You must report **in person at least 21 business days** before moving to another country.

Because the state has flexibility in how information changes may be reported, you should regularly check any updated information you receive from your registering authority on how to report changes in registry information.

C. Prosecutions and Prior Convictions Under the Old SORA

1. How do the decisions about the old SORA affect me?

The decision in *Does II* and *Betts* determine whether you can be criminally liable for *past failures* to comply with the old SORA. Registry violations from before March 24, 2021, are governed by the old SORA. Your liability for past SORA-compliance violations will depend on the date of your registrable offense and the date of the SORA violation, as explained below.

2. How does the date of my offense affect whether I can be charged with past violations of the old SORA?

The decision in *Does II* and *Betts* create two categories of registrants. Which group you are in depends on the **date of your registrable offense**, not the date you were convicted.

- **REGISTRABLE OFFENSE BEFORE JULY 1, 2011**

If your registrable offense(s) occurred before July 1, 2011, then you cannot be prosecuted for *any* compliance offenses under the old SORA that you may have committed before March 24, 2021. Both the *Does II* and *Betts* courts held that the old SORA was unconstitutional in its entirety for such registrants because it imposed retroactive punishment.

- **REGISTRABLE OFFENSE ON OR AFTER JULY 1, 2011**

If your registrable offense(s) occurred on or after July 1, 2011, you *can* be prosecuted for most compliance offenses under the old SORA that occurred before March 24, 2021. But because the *Does II* court also held certain parts of the old SORA to be unconstitutional for all registrants, you cannot be prosecuted under those unconstitutional sections of the law, as explained below. In addition, because enforcement of the old SORA was temporarily suspended due to COVID, you cannot be prosecuted for certain types of SORA violations that occurred while enforcement was suspended from February 14, 2020, through March 24, 2021.

You can only be prosecuted for knowing (willful) violations of the old SORA, not for unintentional or mistaken failures to comply.

3. Can I be charged for SORA-compliance offenses that occurred while enforcement of the old SORA was suspended due to the pandemic?

No, for most types of charges. The *Does II* Court suspended enforcement of the old SORA's registration, verification, school zone, and fee provisions between February 14, 2020, and March 24, 2021. Regardless of when your registrable offense occurred you are **not liable** for violations of the old SORA's registration, verification, school zone, and fee violations that occurred between February 14, 2020, and March 24, 2021.

4. What past SORA-compliance offenses can I be charged with if my registrable offense occurred on or

after July 1, 2011?

You are **not liable** for violations of the following provisions of the old SORA that occurred before March 24, 2021:

- living, working, or “loitering” within 1,000 feet of a school;
- failing to report phone numbers, vehicles, emails, or instant messenger user-names that you “routinely” used; and
- failing to report internet information in person within three days, and certain other internet requirements.

In addition, you can only be prosecuted for knowing (willful) violations of the old SORA, not unintentional or mistaken failures to comply.

5. What should I do if I am charged with violating the old SORA?

If you have pending charges for violating the old SORA, talk to your defense attorney right away about whether your charges should be dismissed under *Does II* and *Betts*. Whether your charges should be dismissed depends in part on the dates of your registrable offense and what your conviction was for. If your registrable offense was from before July 1, 2011, any SORA-compliance charges under the old SORA should be dismissed. If your registrable offense was from after July 1, 2011, see question 4 for information about the types of charges that are invalid. Make sure to show this packet to your defense attorney as soon as possible.

Sample motions to dismiss prosecutions that are invalid under *Does II* and *Betts* will be available on the [ACLU](#) and [SADO](#) websites in the near future.

6. If I was already convicted of violating the old SORA, can I get that conviction removed?

Maybe. If your **conviction is on direct appeal**, talk to your defense attorney right away about moving for dismissal of your case.

If your **conviction is already final**, you can file a motion for relief from judgment. Your conviction is final if the time to file an appeal has passed or you have lost your appeals. The Michigan appellate courts have not yet decided how motions for relief from judgment based on the *Does* and *Betts* cases will be resolved. Because such motions can raise complicated issues, we would encourage you to find an attorney to represent you. If you cannot afford an attorney, you can ask the trial court in your case to appoint counsel. Sample motions to file for relief from judgment and to ask for appointment of counsel will be available on the [ACLU](#) and [SADO](#) websites in the near future.

D. Prosecutions under the New SORA

1. Can I be charged if I don’t comply with the new SORA in the future?

Yes. The new SORA applies to any prosecutions from the date of its effect, March 24, 2021. If you fail to comply with the new SORA, you *can* be prosecuted under the new law, but only for knowing (willful) violations. **If you do not continue to register while the new law is being challenged, you could be prosecuted or jailed.**

2. Can I be convicted under the new SORA if I didn’t know that I had to follow the new SORA or didn’t know what I am required to do?

To be convicted under the new SORA, you must willfully violate the law. If you did not know that you must follow the new SORA or if you were confused about what you are required to do, you may have a defense.

The Michigan State Police sent notice of the new SORA to registrants, but some registrants did not receive notice, and the Michigan State Police did not track whether notices were returned. The notices were also written in a way that is very confusing. Make sure to let your defense attorney know if you did not get the notice or did not understand the notice you received.

In addition, there has been confusion about whether the federal court's April 6, 2020, interim order in *Does II* suspending enforcement of the old SORA's registration, verification, school zone, and fee provisions was still in force after March 24, 2021, when the new law came into effect. Both the Michigan State Police and local law enforcement informed many registrants that they did not yet have to register under the new SORA because the interim order was still in effect. The final order in *Does II* makes clear that SORA enforcement was suspended only for the period between February 14, 2020, and March 24, 2021. However, the confusion about whether the interim order was in effect *may* provide a defense to certain prosecutions, particularly those for SORA violations in the months immediately after the new statute came into effect and before registrants received class member notice in the *Does II* case (which is likely to be sent sometime in October 2021).

3. Can I challenge the constitutionality of the new SORA if I am prosecuted?

You should discuss this with your defense attorney. Whether and what constitutional challenges to raise will depend on your individual situation. A sample motion raising constitutional issues will be available on the [ACLU](#) and [SADO](#) websites in the near future.

E. Challenges to the New SORA

1. Will there be a lawsuit against the new SORA?

Yes. We do not think that the new SORA is constitutional. We believe that the law has done little to fix Michigan's bloated and ineffective registry and, in some ways, has made the problem worse. We are actively working to figure out how best to challenge the new SORA, and the ACLU is preparing a lawsuit challenging the new law. Please be patient. It takes time to develop a strong legal challenge. We will provide updates as they are available.

2. How can I be part of this lawsuit?

The lawsuit will be filed as a class action. If the court certifies the class, then the lawsuit will include all people registered under SORA. You will then automatically be part of the case and do not need to do anything.

3. What will be the focus of the new lawsuit?

The ACLU legal team is developing a series of claims designed to help all registrants, with a focus on the need for individual review and a process for removal from the registry. The lawyers expect to include specific claims for pre-2011 registrants (including reduction of registration terms to at most the pre-2011 length), as well as specific claims for other groups of registrants.

4. Should I file my own lawsuit against the new SORA?

We **strongly discourage registrants from filing their own lawsuits**. Bringing a successful challenge to SORA is extremely complicated and hiring the necessary experts can be very expensive. In addition, if you have your own case, it is possible that the Court will not let you be part of the class action, meaning that you

might not get to benefit from the class case. Most importantly, if there are multiple cases, it makes the legal strategy in the class action harder. Filing your own case could make it more difficult for the legal team to win the case for all registrants.

F. Can I Petition for Removal from SORA?

Right now, the law only allows a very limited number of individuals to petition for removal. Those include:

- Certain Tier I registrants after 10 years on the registry who have not been convicted of any other felony since the registrable offense and meet certain other requirements.
- Certain juveniles after 25 years on the registry who have not been convicted of any other felony since the registrable offense and meet certain other requirements. This only applies if you were a minor at the time of your offense and were adjudicated in juvenile court.
- Individuals who are not actually required to register, but who are still on the registry including:
 - Certain registrants convicted of consensual sex with a minor.
 - Registrants whose offense no longer requires registration because of changes in the law.

If you think you may be eligible for removal, you should talk to an attorney. For more information about eligibility to petition for removal, see [here](#).

We anticipate that the legal challenge in *Does III* will ask the court to order that there be an individual process to seek removal from the registry.

If you are being sentenced in a criminal case—either for violating the new SORA or for a registerable offense—talk to your defense attorney about objections to make at sentencing to registration requirements.

G. How to Get More Information

The new law is complicated, and the information here is likely to be just a start at answering your questions. We encourage you to talk to your criminal defense attorney about the specifics of your case. You can also call a local, free legal services or legal aid office near you. Legal aid offices cannot help with criminal cases, but may be able to assist on registration issues. To find your local, free legal services office, go to <http://michiganlegalhelp.org/> (click on Find a Lawyer) or look in your yellow pages under Attorneys.

The ACLU legal team is working on challenging the law for everyone, so we cannot answer individual questions for each of the 44,000 people on the registry. However, more information is available at aclumich.org/SORA. You can email us at intern@aclumich.org for basic information. You can also ask to get added to an email list where the ACLU sends updates.

Visit SADO's website at www.sado.org for updates and sample pleadings. If you think you need a criminal defense attorney appointed to represent you, write to the trial court who sentenced you to ask for counsel. You could include this document as a basis to support your request for an appointed attorney.

Disclaimer

The ACLU of Michigan and SADO have attempted to provide accurate general information about SORA. However, every individual's situation is different. This packet should not be understood as providing legal advice about your individual situation or as creating an attorney-client relationship with you.