

**COURT-APPROVED NOTICE OF FINAL JUDGMENT
IN LAWSUIT CHALLENGING MICHIGAN’S PRE-2021
SEX OFFENDERS REGISTRATION ACT (SORA)**

Does #1-6 v. Snyder, Case No. 1:16-cv-13137 (class action)
United States District Court for the Eastern District of Michigan

<https://www.aclumich.org/en/registrant-notice-october-2021>

تتوفر نسخة باللغة العربية من هذا الإشعار على :

To: People in Michigan’s Prisons and Jails Who Might Be Affected by this Judgment
Notice Date:

The court has entered an amended final judgment in a case challenging the pre-2021 version of Michigan’s SORA. This judgment affects whether registrants can be prosecuted for any past failures to comply with the old SORA. ALL PRESENT AND FUTURE SORA DUTIES ARE GOVERNED BY THE NEW SORA, WHICH TOOK EFFECT MARCH 24, 2021. THE AMENDED FINAL JUDGMENT ON THE OLD SORA DOES NOT BAR ENFORCEMENT OF THE NEW SORA.

Why am I getting this notice?

This notice is being sent to all Michigan prisoners. If you are required to register under Michigan’s SORA, you are part of a class action lawsuit that challenged the old version of the SORA that was in effect before March 24, 2021 (“old SORA”). In a prior lawsuit (“*Does I*”) the courts said that parts of the old SORA were unconstitutional. The Court in this lawsuit (“*Does II*”) reaffirmed its prior decisions and applied a higher court’s decision in the earlier lawsuit to all Michigan registrants. This notice explains how the decision in *Does II* affects those who must register. If you are not required to register, this notice does not apply to you. It only applies to people who must register.

What is the relationship between this lawsuit and the new SORA?

ANY CURRENT AND FUTURE SORA DUTIES ARE GOVERNED BY THE NEW SORA. After the Court found in *Does II* that parts of the old SORA were unconstitutional, the Legislature passed a new version of SORA, which took effect March 24, 2021 (“new SORA”). Even if a person’s offense was from before 2011, the new SORA requires that person to register, and keeps the same length of registration terms, with limited exceptions. The *Does II* lawsuit challenged only the constitutionality of the old SORA, and so the judgment relates only to the old law. The Michigan Supreme Court also recently decided in *People v. Betts* that retroactive application of the old SORA is unconstitutional for those whose last registrable offense was

committed before the 2011 SORA amendments. That case too only involved the old SORA. Any constitutional challenge to the new SORA must occur via a new lawsuit. For more info, see: <https://www.aclumich.org/SORA>.

Can registrants be charged for not complying with the new SORA in the future?

Yes. The new SORA applies to any violations that occur on or after its effective date of March 24, 2021. Registrants who fail to comply with the new SORA *can* be prosecuted under the new law, but only for knowing (willful) violations. In some cases, people may want to raise a defense against prosecution based on the confusion about when the interim order (suspending enforcement due to COVID) in *Does II* ended. Registrants and defense lawyers can get more information at: <https://www.aclumich.org/SORA>.

What did the Court decide?

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 July 1, 2011. 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 that 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 they cannot be prosecuted for unintentional or mistaken failures to comply. The Court’s February 14, 2020 decision and its amended final judgment are here at: <https://www.aclumich.org/en/news/what-you-need-know-about-does-v-snyder-ii>.

How does the decision about the old SORA affect registrants?

The decision in this case determines whether registrants can be criminally prosecuted for *past failures* to comply with the old SORA. Registry violations from before March 24, 2021 are governed by the old SORA. Any liability for past SORA violations will depend on the date of the registrable offense and the date of the SORA violation, as explained below. But again this doesn’t change a registrant’s obligation to register under the new SORA even if the registrant’s offense was committed pre-2011.

How does the date of the registrable offense affect whether registrants can be prosecuted for past violations of the old SORA?

The amended final judgment creates two categories of registrants. Which group registrants are in depends on the **date of their last registrable sex offense**, not the date they were convicted.

1. REGISTRABLE OFFENSE BEFORE JULY 1, 2011

- If the registrable offense(s) occurred before July 1, 2011 and the person has no other registrable offense since, the registrant cannot be prosecuted for *any* compliance offenses under the old SORA that the registrant may have committed before March 24, 2021. The court held that the old SORA was unconstitutional in its entirety for this group of registrants during that time, because it imposed retroactive punishment.

2. REGISTRABLE OFFENSE ON OR AFTER JULY 1, 2011

- If the registrable offense(s) occurred on or after July 1, 2011, registrants *can* be prosecuted for most compliance offenses under the old SORA that occurred before March 24, 2021. But because the court also held certain parts of the old SORA to be unconstitutional, registrants cannot be prosecuted under those sections of the law, as explained below. In addition, because enforcement of the old SORA was temporarily suspended due to COVID, registrants cannot be prosecuted for certain types of SORA violations that occurred while enforcement was suspended from February 14, 2020 until March 24, 2021.
- Registrants can only be prosecuted for knowing (willful) violations of the old SORA, not for unintentional or mistaken failures to comply.

Can registrants be prosecuted 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 Court suspended enforcement of the old SORA's registration, verification, school zone, and fee provisions between February 14, 2020, and March 24, 2021. After March 24, 2021, there was uncertainty about whether the Court's interim order suspending the enforcement of these provisions affected the new SORA. In light of this confusion, individuals prosecuted for violations that occurred after March 24, 2021, **may want to raise a defense**, as the new SORA requires that any such violation be willful.

What past SORA-compliance offenses can registrants be prosecuted for if their registrable offense occurred before July 1, 2011?

Such registrants **cannot be prosecuted** for any SORA-compliance violations that occurred before March 24, 2021.

What past SORA-compliance offenses can registrants be prosecuted for if their registrable offense occurred on or after July 1, 2011?

Such registrants **cannot be prosecuted** for violations of the old SORA's registration, verification, school zone, and fee violations that occurred between February 14, 2020, and March 24, 2021.

Such registrants **cannot be prosecuted** 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 "routinely used" or "regularly operated" phone numbers, vehicles, emails, or instant messenger user-names; and
- failing to report internet information in person within three days, and certain other internet requirements.

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

What are registrants' duties under the new SORA?

Incarcerated registrants may not have received written notice from the Michigan State Police telling them about their duties under the new SORA law. Upon release such registrants will be informed of their duties under the new SORA. Registrants can read about their duties here:

- MSP: https://www.michigan.gov/documents/msp/SORA_Notification_720161_7.pdf
- ACLU: https://www.aclumich.org/sites/default/files/field_documents/does_betts_info_packet_9.13.2021_final.pdf
- Oliver Law Group: www.oliverlawgroup.com/michigans-sex-offender-registration-act/

What should registrants do if they are charged with or have been convicted of violating the old SORA?

If registrants are charged in the future for a past SORA-compliance offense or if registrants have pending charges against them for a past offense, they should show this notice to their lawyer. If they were convicted in the past of violating the old SORA, they may also want to consult with a lawyer about whether the decision in *Does II*, or the Michigan Supreme Court's decision in *People v. Betts*, affects the validity of any such conviction(s) under the old SORA. If registrants cannot afford a lawyer, they can ask the trial court in their case to appoint one. A packet to file motions yourself is also available on the ACLU website. Lawyers from the ACLU of Michigan cannot assist individual class members in their criminal cases.

QUESTIONS?

Visit these websites for more information:

- ACLU: <https://www.aclumich.org/SORA>
- Oliver Law Group: www.oliverlawgroup.com/michigans-sex-offender-registration-act/
- MSP: https://www.michigan.gov/msp/0,4643,7-123-1878_24961---,00.html.

If these websites don't answer your questions, call your criminal defense lawyer. If you are on probation or parole, talk to your agent.

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://michiganlegalthelp.org/> (click on Find a Lawyer) or look in your yellow pages under Attorneys.

You can email the ACLU of Michigan at intern@aclumich.org to get added to an email list where the ACLU sends updates about SORA-related issues.

DO NOT CALL THE FEDERAL COURT FOR ANY REASON.