

IT'S UNANIMOUS: HOW IOWA MOVED CLOSER TO TREATING SEX OFFENDERS AS SECOND-CLASS CITIZENS BY THE PASSAGE OF AN UNCONSTITUTIONAL REGISTRY DURATION STATUTE

ABSTRACT

“But sex offenders are not second-class citizens. The Constitution protects their liberty and dignity just as it protects everyone else’s.” United States District Court Judge, W. Keith Watkins in Doe v. Marshall, 367 F. Supp. 3d 1310, 1318 (M.D. Ala. 2019).

Trigger Warning: This Note discusses sexual offenses and crimes that may be triggering to some readers

In the last three decades, the public outcry against sexual offenses and sex offenders has dramatically increased across the United States. In 2021, Iowa amended its sex offender registry laws to address sex offenders who move to the state of Iowa. First and foremost, this Note does not address or discuss the policy surrounding the underlying sexual offenses that result in an individual being placed on the registry or their subsequent punishments. The Author sincerely acknowledges the seriousness of sexual offenses and does not condone any crime that results in an individual being placed on a sex offender registry. This Note analyzes Iowa’s new sex offender registry duration statute in its entirety—from the history that led the Iowa legislature to its current state of sex offender legislation and how the new duration law was passed, all the way to how the statute logistically works, or does not work. This Note attempts to shine light on the fact that even sex offenders are entitled to constitutional protections, and that the Iowa legislature, in passing House File 201 unanimously stripped away certain constitutional rights of individuals.

TABLE OF CONTENTS

I. Introduction	934
II. Evolution of Sex Offender Registry Laws	937
A. Federal History of Sex Offender Legislation	937
B. Iowa History of Sex Offender Legislation	939
III. The Creation of Iowa’s New Sex Offender Duration Statute	940
A. The Legislative History of House File 201	941
B. Iowa’s “Purpose” Behind Passing the Duration Statute	941
C. A Look at the Lobbyist Declarations Against House File 201	943

IV. The Complex Relationship Between Iowa's and Other States'	
Duration Laws	944
A. Iowa's Length of Time on the Sex Offender Registry	944
V. The Constitutional Violations and Democratic Issues.....	949
A. If it Looks like Punishment, Sounds like Punishment, and Feels like Punishment—It Is Punishment	949
B. Violation of the Right to Interstate Travel	953
C. Why Is Iowa Relying on the Laws of Other States?	954
VI. Why Being on the Sex Offender Registry Longer Matters: The Implications and Effects	955
VII. Conclusion.....	957

I. INTRODUCTION

It is common knowledge that different states have different laws—it is one of the beauties of the United States of America. Each state adopts its own laws and policies that correspond to the values and needs of its respective citizens. State legislatures recognize this powerful sovereignty and, as such, they put in significant time, diligence, and effort in legislating for their communities.¹ In 2021, however, Iowa passed a new sex offender duration law that overshadows this beauty—a law that not only diminishes the democratic and legislative process, but also violates constitutional liberties.²

What do you think of when you hear or read the words “sex offender” or “sex offender registry”? Most people imagine the creepy, old stranger who was lurking behind the bushes and committed a violent sexual offense against a person, or worse, an innocent, minor child.³ Most people do not think of the 18-year-old who had consensual sex with a 15-year-old, or the drunk, tired teenager who publicly urinated on the side of the street, ultimately exposing themselves. Historically, sex offender legislation, which will be discussed further, has been enacted as a result of high-profile, heinous, media-buzzing crimes.⁴ Even though

1. Gabby Goldstein & Brooke Bullington, *It's Time to Care About State Legislatures*, SISTER DIST. PROJ. (Nov. 1, 2017), <https://whystatesmatter.sisterdistrict.com/its-time-to-care-about-state-legislatures-e24d71b076f5> [<https://perma.cc/DS3J-L8KL>].

2. See H.F. 201, 89th Gen. Assemb., Reg. Sess. (Iowa 2021); IOWA CODE § 692A.103 (2024).

3. See Corey Rayburn Yung, *The Emerging Criminal War on Sex Offenders*, 45 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 435, 453 (2010) (citations omitted).

4. See discussion *infra* Part II; see also Mary Helen McNeal & Patricia Warth, *Barred Forever: Seniors, Housing, and Sex Offense Registration*, 22 KAN. J. L. & PUB. POL'Y 317, 318 (2013).

sex offender legislation is a hot-button, emotional topic, it is nonetheless supported by legislators and community members based on fear.⁵ Some scholars even go as far as to suggest there is an emerging criminal “war” on sex offenders, similar to the War on Drugs that occurred in the 1970s.⁶ When it comes to sex offender legislation, there are a lot of emotions involved, and with heightened emotions comes misconceptions and myths.⁷

One of the most significant myths related to sex offenders and the registry is sex offender homogeneity.⁸ Sex offenders on registries are equally subject to the strict, harsh, and life-altering rules and regulations regardless of the offense they committed—a one-size-fits-all approach.⁹ For example, a child molester, serial rapist, and human trafficker are typically subject to the same harsh registry regulations as the 18-year-old who had consensual sex with a 15-year-old, or the drunk teenager who publicly urinated on the side of the street, ultimately exposing themselves.¹⁰ Iowa’s sex offender duration law is no different; it applies to *all* sex offenders regardless of the offense type.¹¹ While all crimes committed with sexual motivations or intents are serious, sex offender legislation is not typically motivated by nonviolent offenses (like the consensual sex between teenagers).¹² Legislation arises in response to the worst-of-the-worst sex crimes, which ultimately ends up applying to *all* sex offenders.¹³

There is no denying that sex offender legislation serves important purposes: “[T]o increase public awareness about sex offenders living among us so that concerned citizens and parents can take protective actions to prevent victimization” and to “provide[] a system by which law enforcement agencies can track, supervise, and monitor these offenders.”¹⁴ While Iowa’s new law may

5. Jennifer L. Klein & Alexandra B. Mckissick, *Moral Panics and Community Member Perceptions Regarding Reductions in Sex Offender Recidivism*, JUST. POL’Y J., Spring 2019, at 1, 2.

6. See Yung *supra* note 3, at 472.

7. See Klein & Mckissick, *supra* note 5, at 4.

8. Yung *supra* note 3, at 455.

9. *Id.* at 455–56.

10. *Id.*

11. See IOWA CODE §§ 692A.103, .106(8) (2024).

12. See Michelle Meloy et al., *The Sponsors of Sex Offender Bills Speak Up: Policy Makers’ Perceptions of Sex Offenders, Sex Crimes, and Sex Offender Legislation*, 40 CRIM. JUST. & BEHAV. 438, 442–43 (2013).

13. See *id.*; see also 34 U.S.C. § 20901 (listing victims of serious sexual crimes).

14. Jill S. Levenson et al., *Grand Challenges: Social Justice and the Need for Evidence-Based Sex Offender Registry Reform*, J. SOCIO. & SOC. WELFARE, June 2016, at 3, 5.

further this purpose, it crosses the line between constitutional and unconstitutional.¹⁵

Iowa's sex offender law requires any sex offender, who is required to be on the sex offender registry in another state, who is residing in Iowa, moving to Iowa, going to school in Iowa, or working in Iowa, to register for the length of time required in Iowa, *or* the length of time required by the state where they are coming from, "*whichever is longer*."¹⁶ On its face, this statute appears beneficial and constitutional.¹⁷ The average person may think that sex offenders moving into Iowa should be on the registry and should be on the registry for as long as possible to protect the community. However, an in-depth analysis reveals the logistical issues with enforcing this statute and severe constitutional concerns.¹⁸

To conduct an in-depth analysis of this statute, it is necessary to examine other states' sex offender registry laws since Iowa's sex offender registry duration law now depends on the laws of other states.¹⁹ While state sovereignty allows states to have different laws, many states share similar laws based on common values.²⁰ For example, every single state has some version of a law or statute against sexual assault.²¹ While the statute language, classifications, and degrees may differ from state to state, sexual assault is a crime in every state in this country.²² One of the primary concerns with Iowa's new law, is that many states, while they have the same criminal offense, require offenders to be on the sex offender registry for different lengths of time.²³

This Note will examine Iowa's sex offender duration law and the democratic and constitutional issues that it imposes. Part II will explain the history and evolution of federal sex offender registry laws as well as the evolution of Iowa's sex offender registry laws to illustrate the rapid progression of legislation.²⁴ Part III analyzes Iowa's new law in-depth, including its purpose and legislative history, and the lobbyists against the law.²⁵ Part IV examines all other states' registry duration requirements and their effects on Iowa's new law, ultimately revealing no

15. *See infra* Part V.

16. IOWA CODE § 692A.106(8) (2024) (emphasis added).

17. *See id.*

18. *See infra* Part V.

19. *See infra* Part IV.

20. *See infra* Part IV.

21. *See infra* Part IV.

22. *See infra* Part IV.

23. *See infra* Part IV.

24. *See infra* Part II.

25. *See infra* Part III.

other state has a law like Iowa's.²⁶ Part V addresses the constitutional violations and democratic discrepancies with the law.²⁷ Part VI highlights the serious implications of being on the sex offender registry and, ultimately, why the length of time on the registry matters.²⁸ Finally, Part VII concludes.²⁹

II. EVOLUTION OF SEX OFFENDER REGISTRY LAWS

A. Federal History of Sex Offender Legislation

The first major piece of federal sex offender legislation was the Wetterling Act passed in 1994.³⁰ This legislation was passed in response to the kidnapping and eventual death of Jacob Wetterling, an 11-year-old boy.³¹ This was the first time the federal government established standards that states were required to follow regarding their respective sex offender registries.³² Any person convicted of an offense against a minor, convicted of a sexual offense, or who was classified by the sentencing court as a "sexually violent predator," was required to register as a sex offender.³³ A person who was required to register was subject to the registry for 10 years following their conviction or following release from prison, probation, or parole.³⁴ The Wetterling Act's purpose was not for community notification; it only allowed the release of registrant information if it was "necessary to protect the public."³⁵ Just two years later, a more enhanced sex offender registry act amended the Wetterling Act.³⁶ In 1996, Megan's Law was

26. See *infra* Part IV.

27. See *infra* Part V.

28. See *infra* Part VI.

29. See *infra* Part VII.

30. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub L. No. 103-322, § 170101, 108 Stat. 1796, 2038-42 (1994) [hereinafter *The Wetterling Act*], *repealed by* Sex Offender Registration and Notification Act (SORNA), 34 U.S.C. § 20901; see also Lori McPherson, *The Sex Offender Registration and Notification Act (SORNA) at 10 Years: History, Implementation, and the Future*, 64 *DRAKE L. REV.* 741, 748-49 (2016).

31. See Caroline Louise Lewis, *The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act: An Unconstitutional Deprivation of the Right to Privacy and Substantive Due Process*, 31 *HARV. CIV. RTS.-CIV. LIBERTIES L. REV.* 89, 89-90, 92 (1996).

32. McPherson, *supra* note 30, at 748-49.

33. The Wetterling Act, *supra* note 30, § 170101(a)(1)(A)-(B).

34. *Id.* § 170101(b)(6)(A).

35. McPherson, *supra* note 30, at 749 (quoting *The Wetterling Act*, *supra* note 30, § 170101(d)(3)).

36. See Megan's Law, Pub. L. No. 104-145, sec. 2, §170101(d), 110 Stat. 1345, 1345 (1996), *repealed by* SORNA, 34 U.S.C. § 20901.

passed after Megan Kanka was murdered in New Jersey by a registered sex offender.³⁷ Where the Wetterling Act only allowed public disclosure of sex offender information for limited purposes, Megan's Law permitted information collected under a registration program to be disclosed "for any purpose permitted under the laws of the State."³⁸ It also declared the State "shall release relevant information that is necessary to protect the public."³⁹ From the passage of Megan's Law in 1996 until the early 2000s, several smaller amendments and guidelines were imposed including an act listing state offenses comparable to ones listed in the Wetterling Act,⁴⁰ as well as an act that incorporated a grant program to help assist in costs related to the implementation of state registration and notification programs.⁴¹ Congress also passed an act requiring sex offenders who were enrolled or employed at a higher education institution to disclose their status.⁴² It was not until the passage of the PROTECT Act of 2003, that public sex offender registry websites were required in each state.⁴³

This prior legislation led to what is now the current state of the sex offender registry and notification laws—the Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006.⁴⁴ SORNA establishes the minimum guidelines that states must follow to be in compliance and receive federal grant money.⁴⁵ However, states may adopt stricter provisions if they so choose.⁴⁶ One major revision to SORNA was the addition of a new crime—"failure to register"—which provides that a sex offender who has committed a federal or state sex crime, traveled in interstate commerce, and has

37. Jill S. Levenson et al., *Megan's Law and Its Impact on Community Re-Entry for Sex Offenders*, 25 BEHAV. SCI. & L. 587, 587–88 (2007).

38. Compare The Wetterling Act, *supra* note 30, § 170101(d), with Megan's Law, § 2(d)(1).

39. Megan's Law, § 2(d)(2).

40. See Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, Pub. L. No. 105-119, § 115(6)(B)(i–ii), 111 Stat. 2440, 2461–67 (1997), *repealed by* SORNA, § 20901; *see also* McPherson, *supra* note 30, at 753.

41. See Protection of Children from Sexual Predators Act of 1998, Pub. L. No. 105-314, sec. 607(a)(2), § 170101(i)(1)(A), 112 Stat. 2974, 2985–86, *repealed by* SORNA, § 20901.

42. See Campus Sex Crimes Prevention Act, Pub. L. No. 106-386, sec. 1601(b), § 170101, 114 Stat. 1464, 1537 (2000), *repealed by* SORNA, § 20901; *see also* McPherson, *supra* note 30, at 754–55.

43. PROTECT Act, Pub. L. No. 108-21, sec. 604(b), § 170101(e)(2), 117 Stat. 650, 688 (2003), *repealed by* SORNA, § 20901; *see also* McPherson *supra* note 30, at 754–55.

44. See SORNA, 34 U.S.C. § 20901.

45. *Id.* § 20927.

46. See Jacquelyn M. Meirick, Note, *Through the Tiers: Are Iowa's New Sex-Offender Laws Unconstitutional*, 96 IOWA L. REV. 1013, 1016 (2010).

failed to register shall be fined or imprisoned up to 10 years.⁴⁷ SORNA also established a tiered system of registration.⁴⁸ A Tier I sex offender is someone who has committed an offense that does not fall within Tier II or Tier III.⁴⁹ A Tier II sex offender is someone who has committed an offense punishable by more than one year in prison and that offense has been committed against a minor, such as sex trafficking, coercion and enticement, or abusive sexual contact.⁵⁰ A Tier III sex offender is someone who has committed an offense subject to more than one year in prison and the offense is any of the following: comparable or more severe to aggravated sexual abuse or abusive sexual contact against a minor who is under 13 years old; involves kidnapping; or occurs after the person was considered a Tier II offender.⁵¹ The tier classification of a sex offender determines how long a person has to register and how often they must verify or update their registration information: a Tier I offender is on the registry for 15 years and shall appear in person to register every year; a Tier II offender is on the registry for 25 years and shall appear in person to register every six months; and a Tier III offender is on the registry for life, and shall appear in person to register every three months.⁵² Sex offenders who maintain a clean record may be eligible for a reduction in the amount of time they are required to be on the registry.⁵³ The rapid progression of federal sex offender legislation in the past 30 years has been influential in the creation of Iowa's state sex offender legislation.⁵⁴

B. Iowa History of Sex Offender Legislation

Iowa created its first sex offender registry in 1995.⁵⁵ Iowa mainly followed the federal guidelines, until it made a bold, first of its kind, legislative move by passing a residency-restriction law as part of its sex offender legislation in 2002.⁵⁶ The residency restriction prohibited any sex offender who committed an offense against a minor from living within a 2,000-foot radius of a school or childcare

47. 18 U.S.C. § 2250(a).

48. *See* 34 U.S.C. § 20911.

49. *Id.* § 20911(2).

50. *Id.* § 20911(3)(A)–(B).

51. *See id.* § 20911(4).

52. *Id.* §§ 20915, 20918 (detailing time on the registry and frequency of registering in person).

53. *See, e.g., id.* § 20915(b).

54. *See generally* McPherson, *supra* note 30.

55. 1995 Iowa Acts 265, *repealed by* 2009 Iowa Acts 411 (codified as IOWA CODE § 692A (2024)).

56. 2002 Iowa Acts 511 (codified as IOWA CODE § 692A.114 (2024)); *see* Meirick *supra* note 46, at 1017.

facility.⁵⁷ Because Iowa was one of the first states to pass a residency restriction statute, it was viewed as a “trial-and-error” statute.⁵⁸ The statute was considered extremely broad as it applied to any sex offender who was convicted of any offense against a minor, including lesser offenses, such as statutory rape or selling child pornography.⁵⁹ Due to inefficiencies in the law, the Iowa legislature undertook a major redrafting of the residency restriction in 2009.⁶⁰

In addition to reconfiguring the residency restriction statutes, the legislature added exclusion zone provisions, which are still current law in Iowa.⁶¹ The current residency restrictions only apply to sex offenders who have a conviction of an aggravated offense against a minor.⁶² There are also several exemptions to the residency restriction; most notably, if a sex offender has resided at that residence prior to 2002, they are exempted from the residency restriction.⁶³ The current law prohibits a sex offender who has a conviction against a minor from being at or near certain places, including public or nonpublic elementary or secondary schools, any vehicle used to transport students to and from school or extracurricular activities, childcare facilities, public libraries, or any place primarily for the use of minors.⁶⁴ In 2021, Iowa amended the sex offender legislation once again in an attempt to attack sex offenders who move to Iowa.⁶⁵

III. THE CREATION OF IOWA’S NEW SEX OFFENDER DURATION STATUTE

House File 201 (H.F. 201) is comprised of two distinct parts: the extortion offense and sex offender registry duration.⁶⁶ The bill added a provision to Iowa Code § 692A.102 that a person who is convicted of extortion, in violation of Iowa Code § 711.4 that is sexually motivated, is required to be placed on the sex offender registry.⁶⁷ That portion of the bill is not discussed in this Note. H.F. 201 also amended Iowa Code § 692A.106 by adding subsection 8 that reads:

57. 2002 Iowa Acts 511 (codified as IOWA CODE § 692A.114 (2024)); *see also* Meirick, *supra* note 46, at 1017 n.16.

58. Meirick, *supra* note 46, at 1017.

59. *See id.* at 1018.

60. Meirick, *supra* note 46, at 1017; *see* 2009 Iowa Acts 411 (codified as IOWA CODE § 692A.114 (2024)).

61. *See, e.g.*, IOWA CODE §§ 629A.113–.114 (2024); *see also* Meirick, *supra* note 46, at 1017.

62. IOWA CODE § 692A.114(1)(c) (2024).

63. *Id.* § 692A.114(3)(c).

64. *Id.* § 692A.113(1).

65. 2021 Iowa Acts 250 (codified as IOWA CODE § 692A.106(8) (2024)).

66. H.F. 201, 89th Gen. Assemb., Reg. Sess. (Iowa 2021).

67. *Id.*; IOWA CODE § 692A.102(c)(34) (2024).

A sex offender who is required to register in another jurisdiction under the other jurisdiction's sex offender registry but who resides, is employed, or attends school in this state shall be required to register for a period of time equal to the period of time required under the other jurisdiction's requirements or under Iowa law, whichever is longer.⁶⁸

A. The Legislative History of House File 201

The sex offender registry law was introduced to both the Iowa Senate and the Iowa House of Representatives on January 22, 2021.⁶⁹ It passed the Iowa House a mere 11 days later on February 2, 2021, by a vote of 88 yeas and 0 nays; a unanimous vote.⁷⁰ The bill passed the Iowa Senate on April 28, 2021, by a vote of 47 yeas and 0 nays; another unanimous vote.⁷¹ It was signed into law by Governor Kim Reynolds on May 10, 2021.⁷² The legislative history is relatively bare given that the bill passed in both chambers, unanimously.⁷³ There was not a single Iowa state senator or representative that voted nay.⁷⁴ From its date of introduction to its passage, it took Iowa 118 days to pass this law.⁷⁵

B. Iowa's "Purpose" Behind Passing the Duration Statute

The Iowa House video from February 2, 2021 is one source that reveals the purpose of the new law.⁷⁶ A house representative during opening remarks to H.F. 201 stated: "This bill also addresses the problem of so called 'state shopping' This prevents sex offenders from coming to Iowa for a shorter sentence on the registry."⁷⁷ Similarly, the Iowa Senate video from April 28, 2021, further explains

68. IOWA CODE § 692A.106(8) (2024); H.F. 201, 89th Gen. Assemb., Reg. Sess. (Iowa 2021).

69. *Bill History for House File 201*, IOWA LEGISLATURE, <https://www.legis.iowa.gov/legislation/billTracking/billHistory?enhanced=false&ga=89&billName=HF201> [<https://perma.cc/J747-CW3W>].

70. *Id.*

71. *Id.*

72. *Id.*

73. *See id.*

74. *Id.*

75. *See id.*

76. *House Video (2021-02-02)*, IOWA LEGISLATURE (Feb. 2, 2021), <https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20210202053616061&dt=2021-02-02&offset=484&bill=HF%20201&status=i> [<https://www.legis.iowa.gov/perma/1030202412959>].

77. *Id.*

the bill's purpose.⁷⁸ A senator during opening remarks stated the bill's purpose was "to prevent incentivizing sex offenders from moving to Iowa."⁷⁹

There is nothing on public record through the Iowa Legislature to support, refute, or otherwise explain this bill's purpose.⁸⁰ The Iowa sex offender registry website makes certain sex offender information public record, including each offender's name, age, address, type of conviction, age of conviction, current age, and gender of the victim.⁸¹ The conviction type listed for a particular offender, which indicates whether the crime was committed in Iowa or was an out-of-state conviction, can provide some insight into the supposed "state shopping" Iowa legislators claim to be afraid of.⁸² When an offender is convicted of a sex crime in Iowa, the conviction type lists the Iowa Code section that was violated.⁸³ Other offenders have "Non-Iowa Conviction" listed in the conviction section of the webpage.⁸⁴ When an offender has a non-Iowa conviction, this indicates they committed, and were adjudicated of, a sexual offense in another state.⁸⁵ While this does not necessarily mean that an offender lived in a different state other than Iowa when they were convicted of the sexual offense, it can serve as a starting point to help determine whether "state shopping" is an actual problem in Iowa.⁸⁶ For example, an individual who lives in Iowa, on the border of any of the six states that border Iowa, could have been charged and convicted of a sex crime in another state, while continuing to reside in Iowa. As an illustration, if Brian lives in Dubuque, Iowa, which is located near the Illinois and Wisconsin border, and commits a sexual crime in Wisconsin, his conviction type in Iowa will be listed as a "Non-Iowa Conviction" because he will presumably be adjudicated in Wisconsin where the crime occurred even though he lives in Iowa. Someone like Brian is certainly not "state shopping" because he already lived in Iowa.

78. *Senate Video (2021-04-28)*, IOWA LEGISLATURE, (Apr. 28, 2021), <https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20210428120431891&dt=2021-04-28&offset=1286&bill=HF%20201&status=i> [<https://www.legis.iowa.gov/perma/1030202412958>].

79. *Id.*

80. *Compare* H.F. 201, 89th Gen. Assemb., Reg. Sess. (Iowa 2021), *with House Video (2021-02-02)*, *supra* note 76, *and Senate Video (2021-04-28)*, *supra* note 78.

81. *See* IOWA SEX OFFENDER REGISTRY, <https://www.iowasexoffender.gov/> [<https://perma.cc/JB54-5LVG>] (depicting offender information county-by-county in search results); IOWA CODE § 692A.121 (2024).

82. *See House Video (2021-02-02)*, *supra* note 76.

83. *See* IOWA CODE § 692A.121(2)(b)(f) (2024).

84. *See* IOWA SEX OFFENDER REGISTRY, *supra* note 81 (searching individuals through the website will provide examples of a person with a non-Iowa Convictions).

85. *See id.*

86. *See generally House Video (2021-02-02)*, *supra* note 76.

As of January 5, 2022, there were 6,373 sex offenders registered in Iowa.⁸⁷ Looking at the first 900 offenders, 201 offenders had one or more non-Iowa convictions.⁸⁸ An additional 30 offenders had at least one non-Iowa and an Iowa conviction.⁸⁹ Approximately 22 percent of the first 900 offenders had non-Iowa convictions.⁹⁰ While notating the number of non-Iowa convictions, the vast majority of non-Iowa convictions were for reception, distribution, or dissemination of some sort of pornography, which are non-violent in nature.⁹¹ To completely get an idea behind the purpose of this bill, data on offenders who did not live in Iowa, were convicted of a sexual offense, and then moved to Iowa would need to be obtained. Specifically, more data needs to be analyzed to determine whether offenders moved to Iowa strictly to be on the sex offender registry for a shorter period of time.⁹² Regardless, there is little to no evidence that sex offenders in the United States were moving to Iowa to get shorter registry sentences.⁹³

C. A Look at the Lobbyist Declarations Against House File 201

While the legislative history is bare, the lobbyist declarations are anything but.⁹⁴ The American Civil Liberties Union of Iowa (ACLU-IA), Iowa Conference of United Methodist Church, and One Iowa Action were organizations that lobbied against this bill.⁹⁵

One Iowa Action is an organization dedicated to ensuring LGBTQ+ rights in the state of Iowa through education, training, and advocacy.⁹⁶ The Director of Policy and Advocacy for One Iowa Action expressed concerns regarding this bill.⁹⁷ A great concern from One Iowa Action was the law's implications on individuals

87. See IOWA SEX OFFENDER REGISTRY, *supra* note 81 (listing 6,373 registrants on Jan. 5, 2022).

88. See *id.* (examining those sex offenders listed on Jan. 5, 2022).

89. See *id.* (examining those sex offenders listed on Jan. 5, 2022).

90. See *id.* This information was not scientifically obtained through official random sampling methods. The first 900 offenders, who were listed alphabetically by last name, were analyzed.

91. See *id.* (examining those sex offenders listed on Jan. 5, 2022).

92. See *House Video (2021-02-02)*, *supra* note 76.

93. See generally *id.*

94. See *Lobbyist Declarations HF 201*, IOWA LEGISLATURE, <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=89&ba=HF201> [<https://perma.cc/RRA2-VXLM>].

95. *Id.*

96. *Mission*, ONE IOWA ACTION, <https://oneiowaaction.org/mission/> [<https://perma.cc/MAN2-BFLD>].

97. Email from Keenan Crow, Dir. of Pol'y and Advoc., One Iowa Action, to Author (Dec. 10, 2021, 11:44 A.M.) (on file with Author).

who were convicted in another state for HIV transmission or exposure crimes.⁹⁸ In 2014, Iowa reformed its statute on the communication of transmissible diseases.⁹⁹ Prior to 2014, a person convicted of exposing another individual to HIV was required to be on the sex offender registry, even if they did not actually transmit HIV to that person.¹⁰⁰ Iowa requires registration on the sex offender registry for “an offender required to register in another jurisdiction under the other jurisdiction’s sex offender registry . . . if the offender resides, is employed, or attends school in [Iowa].”¹⁰¹

For example, say Tony was convicted of transmitting HIV to another individual in South Dakota (a state that still mandates sex offender registration for this offense).¹⁰² If Tony were to move to Iowa, Tony would be required to register because he was required to register under another jurisdiction’s (South Dakota’s) sex offender registry.¹⁰³ “Now, add in HF201, and you get to a truly bizarre situation where someone could be on the Iowa sex offender registry *for life* for an act that wouldn’t even be considered a crime had it been undertaken within Iowa.”¹⁰⁴

IV. THE COMPLEX RELATIONSHIP BETWEEN IOWA’S AND OTHER STATES’ DURATION LAWS

A. Iowa’s Length of Time on the Sex Offender Registry

In Iowa, there are only two timeframes for which a sex offender may be required to register upon initial registration: 10 years or life.¹⁰⁵ A sex offender must register for life if one of the following circumstances apply:

- An offender is already on the registry and is convicted of another sex offense which requires subsequent registration.¹⁰⁶

98. *Id.*

99. *Id.*; see also, THE CTR. FOR HIV L. & POL’Y, HIV CRIMINAL LAW REFORM: BEFORE & AFTER (2020), <https://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminal%20Law%20Reform%20Before%20and%20After%20Iowa%2C%20CHLP%202020.pdf> [https://perma.cc/R4Z6-K9WG].

100. THE CTR. FOR HIV L. & POL’Y, *supra* note 99.

101. IOWA CODE § 692A.103(1) (2024).

102. See S.D. CODIFIED LAWS § 22-24B-1(20) (2024); Email from Keenan Crow, *supra* note 97.

103. See IOWA CODE § 692A.103(1) (2024).

104. Email from Keenan Crow, *supra* note 97.

105. IOWA CODE §§ 692A.106(1), (5) (2024).

106. *Id.* § 692A.106(5).

- An offender is convicted of an aggravated offense, defined by law.¹⁰⁷
- An offender is deemed a sexually violent predator.¹⁰⁸

All offenders who do not fall within one of those circumstances are required to register for 10 years.¹⁰⁹ Prior to the passage of Iowa's duration statute, the only way a sex offender would be required to register for a period of time other than 10 years or lifetime is if that offender violated any requirements of the sex offender registry.¹¹⁰ An offender who is required to register for 10 years, but violates any provision of the sex offender registry requirements, is required to register for an additional 10 years for each violation.¹¹¹ For example, if Jack was sentenced to the sex offender registry for 10 years, but three years in he forgot to update his registration, he would be required to register for another 10 years, putting him at a total of 20 years to serve on the registry.¹¹² Since the passage of H.F. 201, there will certainly be more than two timeframes of registration duration in Iowa because other states have different duration timeframes.¹¹³ Iowa now relies on other states' duration timeframes to dictate its own for anyone moving to Iowa.¹¹⁴

B. Other States' Length of Time on the Sex Offender Registry

If the federal government had its way, every state would have uniform sex offender duration requirements pursuant to SORNA. Tier I offenders would be required to register for 15 years.¹¹⁵ Tier II offenders would be required to register for 25 years.¹¹⁶ Tier III offenders would be required to register for life.¹¹⁷ SORNA, though, only designates these duration lengths as the minimum; states can and do choose to increase the lengths of duration.¹¹⁸ Tier I offenders in Iowa are required to register for 10 years instead of SORNA's minimum of 15 years.¹¹⁹ Other states,

107. *Id.*

108. *Id.* § 692A.106(6).

109. *Id.* § 692A.106(1).

110. *Id.* § 692A.106(4); H.F. 201, 89th Gen. Assemb., Reg. Sess. (Iowa 2021).

111. IOWA CODE § 692A.106(4) (2024).

112. *See id.*

113. *See id.* § 692A.106(8).

114. *See id.*

115. *See* 34 U.S.C. § 20915(a)(1).

116. *See id.* § 20915(a)(2).

117. *See id.* § 20915(a)(3).

118. *See* U.S. v. Del Valle-Cruz, 785 F.3d 48, 55 (1st Cir. 2015) ("According to the Attorney General, SORNA 'establishes minimum national standards, setting a floor, not a ceiling' for the individual states.") (citing National Guidelines for Sex Offender Registration and Notification 73 Fed. Reg. 38,030-01, 38,032 (July 2, 2008)).

119. *Compare* IOWA CODE § 692A.106(1) (2024), with 34 U.S.C. § 20915(a)(1).

like Idaho, have chosen to fluctuate their duration requirements.¹²⁰ Charted below are registration duration minimums for each state plus the District of Columbia (D.C.).

MINIMUM REGISTRY DURATION

5 years	South Dakota. ¹²¹
10 years	Arizona, California, Connecticut, D.C., Illinois, Indiana, Iowa, Maine, Minnesota, New Hampshire, New Mexico, Rhode Island, Texas, Utah, Vermont, Washington, West Virginia. ¹²²
15 years	Alaska, Delaware, Kansas, Louisiana*, Maryland, Michigan, Mississippi, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, Wisconsin. ¹²³

120. See IDAHO CODE §§ 18-8307(7), 18-8310 (2024) (allowing nonrecidivist offenders an opportunity to petition a court for removal from registry after 10 years).

121. S.D. CODIFIED LAWS § 22-24B-2.1 (2024).

122. See ARIZ. REV. STAT. ANN. § 13-3821(M) (2024); CAL. PENAL CODE § 290(d) (West 2022); CONN. GEN. STAT. § 54-251(a) (2024); D.C. CODE § 22-4002(a) (2024); 730 ILL. COMP. STAT. 150/3(c)(2.1) (2024); IND. CODE § 11-8-8-19 (2024); IOWA CODE § 692A-106(1) (2024); ME. STAT. tit. 34-A, § 11285(1) (2024); MINN. STAT. § 243.166(6) (2024); N.H. REV. STAT. ANN. § 651-B:6(II) (2024); N.M. STAT. ANN. § 29-11A-5(E) (2024); 11 R.I. GEN. LAWS § 11-37.1-4(a) (2024); TEX. CODE CRIM. PROC. ANN. art. 62.101(b) (West 2024); UTAH CODE ANN. § 77-41-105(3)(a) (West 2024); VT. STAT. ANN. tit. 13, § 5407(e) (2024); WASH. REV. CODE § 9A.44.140(3) (2024); W. VA. CODE § 15-12-4(a)(1) (2024).

123. See ALASKA STAT. § 12.63.020(a)(1)(B) (2024); DEL. CODE ANN. tit. 11, § 4121(e)(1)(c) (2024); KAN. STAT. ANN. § 22-4906(a)(1) (2024); LA. STAT. ANN. § 15:544(A) (2024); MD. CODE ANN. CRIM. PROC. § 11-707(a)(4)(i) (West 2024); MICH. COMP. LAWS § 28.725(11) (2024); MISS. CODE ANN. § 45-33-47(2)(b) (2024); MO. REV. STAT. § 589.400(4)(1) (2024); NEB. REV. STAT. § 29-4005(1)(b)(i) (2024); NEV. REV. STAT. § 179D.490(2)(a) (2024); N.D. CENT. CODE § 12.1-32-15(8)(a) (2024); OHIO REV. CODE ANN. § 2950.07(B)(3) (West 2024); OKLA. STAT. tit. 57, § 583(C)(1) (2024); 42 PA. CONS. STAT. § 9799.15(a)(1) (2024); WIS. STAT. § 301.45(5) (2024).

20 years	Kentucky, Massachusetts, New York. ¹²⁴
30 years	North Carolina. ¹²⁵
Life	Alabama, Arkansas, Colorado, Florida, Georgia, Hawaii, Idaho, Montana, New Jersey, Oregon, South Carolina, Tennessee, Virginia, Wyoming. ¹²⁶

Approximately 65 percent of states have a longer minimum duration length than Iowa.¹²⁷ Of the six states that border Iowa (Minnesota, Wisconsin, Illinois,

124. See KY. REV. STAT. ANN. § 17.520(3) (West 2024) (following 10 years after a conviction, an offender may send an application to the offender registry board to terminate their obligation to register); MASS. GEN. LAWS ch. 6, § 178G (2024); N.Y. CORRECT. LAW § 168-H(1) (McKinney 2024).

125. See N.C. GEN. STAT. § 14-208.7(a) (2024) (following 10 years after a conviction, an offender may ask a court to shorten their obligation to register).

126. See ALA. CODE § 15-20A-3(b) (2024); ARK. CODE ANN. § 12-12-919 (2024) (requiring lifetime obligations to register for particular offenses, and other less serious offenders may apply to shorten their registration obligation after 15 years from the time of first registration); COLO. REV. STAT. § 16-22-108(d)(I) (2024) (petitioning court for removal from registry is possible after 20 years); FLA. STAT. § 943.0435(11) (2024) (petitioning court for removal from registry is possible for certain offenses after 25 years); GA. CODE ANN. § 42-1-12(f)(6) (2024) (petitioning a court for removal from registry is possible under certain circumstances); HAW. REV. STAT. § 846E-10 (2024) (petitioning a court for removal from registry is possible); IDAHO CODE §§ 18-8307(7) (2024) (petitioning a court for removal from registry is possible after 10 years); MONT. CODE ANN. § 46-23-506(1) (2024) (petitioning a court for removal from registry is possible); N.J. STAT. ANN. § 2C:7-2 (West 2024) (petitioning a court for removal from registry is possible after 15 years); OR. REV. STAT. § 163A.125 (2024) (petitioning a court for removal from registry is possible and when a person can depends on the tier of offender); S.C. CODE ANN. § 23-3-460(A) (2024) (petitioning a court for removal from registry is possible and when a person can depends on the tier of offender); TENN. CODE ANN. § 40-39-207(g)(2) (2024) (petitioning the Tennessee Bureau of Investigation for removal from registry is possible for less serious offenses after 10 years); VA. CODE ANN. §§ 9.1-908, .1-910 (2024) (petitioning a court for removal from registry is possible and when a person can depends on the tier of offender); WYO. STAT. ANN. § 7-19-304(a) (2024) (petitioning a court for removal from registry is possible for less serious offenses after 10 years).

127. See *supra* notes 123–26 and associated table.

Missouri, Nebraska, and South Dakota), half of them have a longer minimum duration requirement than Iowa.¹²⁸

The fourteen life-minimum states have chosen to shift the burden of registration duration onto the sex offender by requiring the sex offender to petition for early termination of registration requirements rather than letting a term of registration expire.¹²⁹ The states that have lifetime registration requirements for all sex offenders regardless of the type of offense have provisions that allow the sex offender to petition for early release of the full registration period.¹³⁰ For example,

128. See MINN. STAT. § 243.166(6) (2024); WIS. STAT. § 301.45(5) (2024); 730 ILL. COMP. STAT. 150/2.1) (2024); MO. REV. STAT. § 589.400(4)(1) (2024); NEB. REV. STAT. § 29-4005 (2024); S.D. CODIFIED LAWS § 22-24B-2.1 (2024).

129. See ALA. CODE § 15-20A-24 (2024); Doe v. Dept. of Pub. Safety, 444 P.3d 116 (Alaska 2019); ARK. CODE ANN. § 12-12-919(b) (2024); CAL. PENAL CODE § 290.5 (West 2024); COLO. REV. STAT. § 16-22-103(3) (2024); DEL. CODE ANN. tit. 11, § 4121 (2024); FLA. STAT. § 943.0435(11)(a)(3) (2024); GA. CODE ANN. § 42-1-19(a) (2024); HAW. REV. STAT. § 846E-10 (2024); IDAHO CODE § 18-8310 (2024); IOWA CODE §§ 692A.128(1)–(6) (2024); LA. STAT. ANN. § 15:544 (2024); MD. CODE ANN. CRIM. PROC. § 11-707(c) (West 2024); MASS. GEN. LAWS ch. 6, § 178G (2024); MICH. COMP. LAWS § 28.728C (2024); MISS. CODE ANN. § 45-33-47(2)(b) (2024); MO. REV. STAT. § 589.400 (2024); MONT. CODE ANN. §§ 46-23-506(3)(b), (5) (2024); NEB. REV. STAT. § 29-4005(2) (2024); NEV. REV. STAT. §§ 179D.490(3), (4) (2024); N.H. REV. STAT. ANN. § 651-B:6(III) (2024); N.J. STAT. ANN. § 2C:7-2 (West 2024); N.Y. CORRECT. LAW § 168-O (McKinney 2024); N.C. GEN. STAT. § 14-208.12(a) (2024); OHIO REV. CODE ANN. § 2950.15(C)(1) (West 2024); OKLA. STAT. tit. 57, § 583(E) (2024); OR. REV. STAT. § 163A.125 (2024); S.C. CODE ANN. § 23-3-463(A) (2024); S.D. CODIFIED LAWS § 22-24B-17, 19 (2024); TENN. CODE ANN. § 40-39-207(a)(1) (2024); TEXAS CODE CRIM. PROC. ANN. art. 62.404 (2024); UTAH CODE ANN. § 77-41-112 (West 2024); VA. CODE ANN. § 9.1-910 (2024); WASH. REV. CODE § 9A.44.142 (2024); WYO. STAT. ANN. § 7-19-304(a) (2024); 50-State Comparison: Relief from Sex Offense Registration Obligations, RESTORATION OF RTS. PROJ., <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-relief-from-sex-offender-registration-obligations/> [https://perma.cc/9YUR-CLT2] (Oct. 2022).

130. ALA. CODE § 15-20A-24 (2024) (allowing petition at any time provided certain conditions are met); ARK. CODE ANN. § 12-12-919 (2024) (allowing petition after 15 years); COLO. REV. STAT. § 16-22-103 (2024); FLA. STAT. § 943.0435(11)(a)(3) (2024) (allowing for petition following 25 years of no arrest since release for the original offense); GA. CODE ANN. § 42-1-19(a) (2024) (allowing petition from level 1 offenders after 5 years and level 2 offenders after 10 years); HAW. REV. STAT. § 846E-10 (2024) (allowing petition for any offense after 40 years); IDAHO CODE § 18-8310 (2024) (allowing petition after 10 years); MONT. CODE ANN. § 46-23-506(3)(b), (5) (2024) (allowing petition after 10 years for level 1 offenders and 25 years for level 2 offenders); N.J. STAT. ANN. § 2C:7-2 (West 2024) (allowing for petition upon proof of no offense for 15 years); OR. REV. STAT. § 163A.125 (2024) (allowing for petition after 5 years for level 1 offenders and 10 years for level 2 offenders, petition not available for level 3 offenders); S.C. CODE ANN. § 23-3-463(A) (2024) (allowing for petition for level 1 and 2 offenders at any time and for level 3 offenders after 30 years); TENN. CODE ANN. § 40-39-

Idaho has a lifetime registration minimum, but offenders (who are not recidivists, have not been convicted of an aggravated offense, or have not been designated as a sexually violent predator), after 10 years, can petition the court to release them from having to register upon showing good cause.¹³¹ In Idaho, the burden is on the sex offender to take the initiative of petitioning the court, not on the sentence expiring, as is the case in Iowa.¹³² This makes a significant impact on offenders moving to Iowa.

For example, say Aaron is convicted and is required to register in Iowa, and Tom is convicted and is required to register in Idaho. Assume they have been convicted for sexual harassment, which is not an aggravated offense. Aaron would be required to register for 10 years in Iowa.¹³³ Tom would be required to register for life in Idaho, but after 10 years could petition to be released from the registry.¹³⁴ The effects are essentially the same; after 10 years both of them could be off the registry. But Iowa's new duration law is oblivious to the option to petition for release in states with lifetime registry requirements.¹³⁵ When an offender like Tom moves to Iowa, Iowa law does not care that he would have been able to petition off the registry after 10 years, it will only see that he was required to register for life in Idaho, and as such, will be required to register for life if he moved to Iowa.¹³⁶

V. THE CONSTITUTIONAL VIOLATIONS AND DEMOCRATIC ISSUES

A. *If it Looks like Punishment, Sounds like Punishment, and Feels like Punishment—It Is Punishment*

In 2003, the U.S. Supreme Court made one thing clear: the sex offender registry is not punishment.¹³⁷ Yes, you read that correctly. Being placed on the sex offender registry is not punishment.¹³⁸ In *Smith v. Doe*, two sex offenders in Alaska were convicted of sexual abuse and subsequently released from prison in 1990.¹³⁹

207(a)(1) (2024) (allowing for petition no sooner than 10 years after offense); VA. CODE ANN. § 9.1-910 (2024) (allowing for petition from level 1 offenders after 15 years, level 2 after 25 years, and disallowing petition for level 3 offenders); WYO. STAT. ANN. § 7-19-304(a) (2024) (allowing for level 1 petition after 10 years and level 2 petition after 25 years).

131. IDAHO CODE § 18-8307(7), 8310 (2024).

132. *See id.*; IOWA CODE § 692A.116 (2024).

133. *See* IOWA CODE § 692A-106 (2024).

134. *See* IDAHO CODE §§ 18-8307(7), 18-8310 (2024).

135. *See* IOWA CODE § 692A.106(8) (2024) (failing to recognize the ability to petition for removal from the state where the offense arose from).

136. *See id.*

137. *Smith v. Doe*, 538 U.S. 84, 105 (2003).

138. *Id.*

139. *Id.* at 91.

When Alaska created its sex offender registry in 1994 it applied retroactively, and as such, the two offenders were required to register.¹⁴⁰ The offenders brought an action declaring violations of the Ex Post Facto and Due Process Clauses under the U.S. Constitution.¹⁴¹ Congress and state legislatures may not enact ex post facto laws under the United States Constitution.¹⁴² An ex post facto law is “a law that impermissibly applies retroactively . . . [such] as by making into a crime an action that was legal when it was committed or increasing the punishment for past conduct.”¹⁴³ But an ex post facto claim only applies to punishment, therefore, the Court was forced to answer the question: Is the sex offender registry punishment?¹⁴⁴ To determine whether the sex offender registry was punishment or not, the Court evaluated the intent and effects of the registry.¹⁴⁵ The Court found the intent of the legislature was not to impose punishment by the sex offender registry.¹⁴⁶ The Court held its purpose was regulatory in nature, namely because sex offenders are dangerous, and the public ought to be notified of offender whereabouts.¹⁴⁷ The Court continued its analysis by examining the effects of the sex offender registry and whether those effects were punitive in nature.¹⁴⁸ To do so, the Court relied on the seven factors poised in *Kennedy v. Mendoza-Martinez*.¹⁴⁹ The *Mendoza-Martinez* factors are nonexhaustive and not dispositive.¹⁵⁰ The seven factors are:

Whether 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 purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned.¹⁵¹

140. *Id.* at 90–91.

141. *Id.* at 91.

142. U.S. CONST. art. I, § 9, cl. 3; *id.* art. I, § 10 cl. 1.

143. *Ex Post Facto Law*, BLACK’S LAW DICTIONARY (11th ed. 2019).

144. *Smith*, 538 U.S. at 89.

145. *Id.* at 92, 97.

146. *Id.* at 96.

147. *See id.* at 93–94 (“[A]n imposition of restrictive measures on sex offenders adjudged to be dangerous is ‘a legitimate nonpunitive governmental objective and has been historically so regarded.’”) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997)).

148. *Id.* at 97.

149. *Id.*

150. *Id.*

151. *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963).

The Supreme Court held that being placed on the sex offender registry has not historically been regarded as punishment, and that sex offenders are neither affirmatively disabled nor restrained.¹⁵² The Court held the most significant factor was that there is a nonpunitive, alternative purpose—public notification.¹⁵³ Because the Court held the sex offender registry was nonpunitive, the Ex Post Facto Clause of the U.S. Constitution was inapplicable, and thus, was not violated.¹⁵⁴

In 2018, however, the Iowa Supreme Court contradicted the U.S. Supreme Court's *Smith* ruling.¹⁵⁵ In *In re T.H.*, a 14-year-old juvenile male was found guilty of sexual abuse in the third degree against a 16-year-old female.¹⁵⁶ Because he was 14 and committed the offense with force, the district court had no discretion to waive the sex offender registration requirements, and the minor, T.H., was ordered to register.¹⁵⁷ T.H. claimed mandatory sex offender registration for juveniles constituted cruel and unusual punishment in violation of the Iowa and United States Constitutions.¹⁵⁸ The Iowa Supreme Court went through an analysis of the *Mendoza-Martinez* factors to determine whether the sex offender registry, as applied to juveniles, is punishment.¹⁵⁹ The Iowa Supreme Court found that juveniles would be affirmatively disabled or restrained if they were “hindered in meaningfully reintegrating into their communities.”¹⁶⁰ It found that placing a juvenile on the registry has historically been viewed as punishment because “[j]uveniles are traditionally shielded from having their records publicized unless they are deemed to be in need of punishment and beyond rehabilitation.”¹⁶¹ The Court also relied heavily on the seventh factor—whether it appears excessive in relation to the alternative purpose assigned—and determined that “[s]ubjecting some juveniles to mandatory registration, without any prerequisite determination of the likelihood of reoffending, triggers ‘consequences to sex offenders that go beyond the state’s interest in public safety.’”¹⁶² The Iowa Supreme Court

152. *Smith*, 538 U.S. at 98–102.

153. *Id.* at 102–03.

154. *Id.* at 105–06.

155. *In re T.H.*, 913 N.W.2d 578, 596 (Iowa 2018) (holding “that mandatory sex offender registration for juvenile offenders is sufficiently punitive to amount to imposing criminal punishment”).

156. *Id.* at 580–81.

157. *Id.* at 582.

158. *Id.*

159. *Id.* at 587–88.

160. *Id.* at 588.

161. *Id.* at 592.

162. *Id.* at 596 (citing *Doe v. State*, 189 P.3d 999, 1018 (Alaska 2008)).

ultimately determined that mandatory sex offender registration for juveniles was punishment but that, in T.H.'s specific case, it was not cruel and unusual.¹⁶³

This raises the question: How can something be punishment for some but not others? Iowa Supreme Court Justice Edward Mansfield, concurring in part and dissenting in part, pointed out this discrepancy: "I do not agree that registration which is nonpunitive for adults becomes punitive when applied in a more lenient way to juveniles."¹⁶⁴ The Iowa Supreme Court's analysis of the *Mendoza-Martinez* factors equally applies to adult offenders. For example, in its analysis of whether the sex offender registry is an affirmative disability or restraint on juveniles the court lists several reasons as to why it is an affirmative disability: it "could prevent juveniles from participating in prosocial after-school activities," juveniles would be severely limited in their employment options, it isolates juveniles from their peers outside of school hours, and juveniles would have to appear in person to verify their residence, employment, and school.¹⁶⁵ But every single one of these reasons applies to adult offenders as well—adult sex offenders with children would not be able to go to their own children's after-school functions, they are limited in their employment options, they certainly feel isolated, and they must also appear in person to verify their residence, employment, and school.¹⁶⁶ The Iowa Supreme Court even shockingly stated: "In fact, the statutory scheme, which requires in-person check-ins, employment conditions, and the possibility of electronic monitoring, is *strikingly similar to supervised probation*."¹⁶⁷ Once again, if the sex offender registry is so similar to probation for juveniles, how is it any different as applied to adult sex offenders? Sex offender registry requirements are punishment disguised as regulation to avoid constitutional challenges.

The language of the statute suggests the new duration law applies retroactively to sex offenders who were convicted prior to July 1, 2009.¹⁶⁸ Consequently, complications applying the duration law on convicted juveniles who moved into before the statute took effect may arise. There are still states that

163. *Id.* at 596–97.

164. *Id.* at 607 (Mansfield, J., concurring in part and dissenting in part).

165. *Id.* at 588 (majority opinion).

166. See IOWA CODE §§ 692A.113, 114 (2024) (describing exclusions from certain zones and employment opportunities); *id.* § 692A.104 (stating sex offenders must appear in person to register with the sheriff); Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 J. CONTEMP. CRIM. JUST. 67, 78 (2005) ("[O]ffenders are pushed toward isolation and they may actually lose support systems that can be critical to preventing reoffending.").

167. *In re T.H.*, 913 N.W.2d at 589 (emphasis added).

168. IOWA CODE § 692A.106(8) (2024).

mandate juveniles to be on the registry.¹⁶⁹ Hypothetically, if Bella, a 15-year-old, was mandated to be on the registry for 20 years in State A, and moved to Iowa where she would be required to be on the registry for 20 years, Bella could likely challenge the registry duration under *In re T.H.* The statute as applied to juveniles could be problematic in the future.

B. Violation of the Right to Interstate Travel

Even if the sex offender registry is nonpunitive, which is the current law, the best legal challenge to this new duration statute is that it infringes on the fundamental right to interstate travel.¹⁷⁰ The United States Supreme Court has long recognized there is a “constitutional right to travel from one State to another.”¹⁷¹ While there is disagreement as to the textual source of this fundamental right, it nonetheless has been recognized consistently.¹⁷² This fundamental right “protects interstate travelers against two sets of burdens: ‘the erection of actual barriers to interstate movement’ and ‘being treated differently’ from intrastate travelers.”¹⁷³ There are three components to this fundamental right: First, a citizen of one state has the right to enter and to leave another state; second, a citizen of one state has the “right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present” in another state; and third, a citizen of one state “*who elect[s] to become [a] permanent resident*” of another state has “the right to be treated like other citizens of that [second] State.”¹⁷⁴ In *Doe v. Miller*, three Iowa sex offenders challenged Iowa’s residency restrictions.¹⁷⁵ They challenged the statute on several constitutional grounds, including their right to interstate travel.¹⁷⁶ They argued the

169. See, e.g., ARIZ. REV. STAT. ANN. § 13-3821 (2024); COLO. REV. STAT. § 16-22-108 (2024).

170. See, e.g., *Formaro v. Polk County*, 773 N.W.2d 834, 838 (Iowa 2009) (holding Iowa sex offender registry requirements did not violate right to intrastate travel and freedom of association because offender was still free to leave the state). *Formaro v. Polk County* involved an individual who wanted to move *within* Iowa, so the case does not foreclose the possibility that the law may be unconstitutional as applied to individuals who move *into* Iowa. See *id.* at 837–38.

171. *United States v. Guest*, 383 U.S. 745, 757 (1966).

172. See, e.g., *Formaro*, 773 N.W.2d at 838 (“Almost half a century ago, the United States Supreme Court recognized a federal constitutional right to interstate travel.”); *Shapiro v. Thompson*, 394 U.S. 618, 663 (1966), *overruled on other grounds by* *Edelman v. Jordan*, 415 U.S. 651 (1974) (“[T]he classification here touches on the fundamental right of interstate movement . . .”).

173. *Doe v. Miller*, 405 F.3d 700, 711 (8th Cir. 2005) (quoting *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 277 (1993)) (emphasis added).

174. *Id.* (citing *Saenz v. Roe*, 526 U.S. 489, 500 (1999)) (emphasis added).

175. *Id.* at 705.

176. *Id.* at 711.

law deters offenders from migrating to Iowa and effectively bans them from living in large areas of the state.¹⁷⁷ The court disagreed, holding there was no physical obstacle to a sex offender's entry into Iowa and there was "free ingress and regress" into and out of the state.¹⁷⁸ The Eighth Circuit articulated that the right to interstate travel had not been infringed upon because the Iowa statute did not "violate [the] 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."¹⁷⁹ The new duration law does exactly that—it treats the out-of-state sex offender differently than the Iowa sex offender.¹⁸⁰ This is the exact issue raised in the previously mentioned example with Aaron and Tom. If Tom (on the registry for life in Idaho) moves to Iowa, he is treated differently than Aaron even though they committed and were convicted of the exact same crime.¹⁸¹ This law can and should be challenged under the infringement of the right to interstate travel.¹⁸²

C. *Why Is Iowa Relying on the Laws of Other States?*

The last argument is one of democracy and policy. It seems inherently troubling for Iowa lawmakers to rely on the sex offender registry laws of other states to dictate what happens within Iowa's borders. If lawmakers are concerned about state shopping and people migrating to Iowa for a lower registry duration, the most direct solution is to modify the registry duration for offenses in Iowa. Iowa lawmakers have legislatively decided that sex offenders shall be on the registry for 10 years or for life.¹⁸³ It was their choice to have the minimum registry period be 10 years. If lawmakers are concerned that registry duration is too low, they ought to legislatively change the laws. This could continue to be problematic in the future if other states decide to adopt this duration statute. For example, let us assume Bella is on the registry in State A for 15 years. Bella decides to move to State B, which has the exact same language as Iowa and requires Bella to register

177. *Id.*

178. *Id.* at 712.

179. *Id.*

180. *See* IOWA CODE § 692A.106 (2024).

181. *See supra* Part IV.B.

182. The Iowa Supreme Court recently heard a case that challenged the constitutionality of Iowa Code § 692A.128(3), alledging the in-state residency requirement to request modification of sex-offender registration violates the Privileges and Immunities Clauses of both the Iowa and U.S. Constitutions. *Olsen v. State*, 9 N.W.3d 21, 26 (Iowa 2024). The court did not rule on the issue for lack of evidence on whether there is a sufficient justification for the discrimination against out-of-state residents. *Id.* at 28–29.

183. IOWA CODE §§ 692A.106(1), (5) (2024).

for the time in State B or State A, *whichever is longer*.¹⁸⁴ If State B requires lifetime registration, which is longer than State A's 15 years, then Bella will be required to register for life in State B. Now, what if Bella decides to move to Iowa? Does the lifetime registration in State B follow her to Iowa? In which case, if any sex offender lives or moves to a state that has a lifetime registry, will they be on for life? This could lead to a dangerous slippery slope where the states that do have lifetime registries or long minimums could end up dominating the legislative scheme. Viewing it more conceptually, if all other 49 states had lifetime registration requirements and Iowa was the only state that did not, anyone who moved to Iowa would be required to register for life under this scheme, and Iowa's laws would effectively be diminished and overshadowed by the laws of other states.

VI. WHY BEING ON THE SEX OFFENDER REGISTRY LONGER MATTERS: THE IMPLICATIONS AND EFFECTS

As of 2021, there were approximately 917,771 registered sex offenders in the United States, which equates to roughly 279 sex offenders per 100,000 people.¹⁸⁵ As of April 2024, there were 6,670 registered sex offenders in the state of Iowa.¹⁸⁶ While the U.S. Supreme Court has decided being on the registry is not punishment, the implications and effects of being on the registry in Iowa are startling.

First and foremost, complying with the logistical and procedural registry requirements are burdensome. A sex offender must register in each county where they live, work, or attend school.¹⁸⁷ Every time an offender moves, changes employment, or changes attendance at a school, they must notify each applicable county by going to the sheriff's office.¹⁸⁸ Any time an offender wants to visit family or friends, or goes on a trip for work that lasts more than five days, they must appear in person, notify the sheriff's office, and provide them the address.¹⁸⁹ At least once a year, and sometimes more frequently depending on the tier status, an offender must appear in person and update all personal information, including an updated photograph.¹⁹⁰ An offender must pay an annual fee of \$25 to be on the

184. *See id.* § 692A.106(8).

185. Aliza Vigderman & Gabe Turner, *United States Cities Ranked by the Frequency of Registered Sex Offenders*, SECURITY.ORG, <https://www.security.org/blog/u-s-cities-ranked-by-the-frequency-of-registered-sex-offenders/> [<https://perma.cc/59W9-RWXS>] (Jan. 25, 2024).

186. *Iowa Sex Offender Registry*, <https://www.iowasexoffender.gov/> [<https://perma.cc/7UF4-HBAN>]. Historical data is unavailable on the website.

187. IOWA CODE § 692A.104(1) (2024).

188. *Id.* § 692A.104(2).

189. *Id.* § 692A.105.

190. *Id.* § 692A.108(1).

sex offender registry.¹⁹¹ If an offender fails to do any of those things, they commit an aggravated misdemeanor, or a Class D felony if it is a second or subsequent offense.¹⁹² Not only that, but failing to comply with these requirements results in the offender having to be on the registry for an additional 10 years.¹⁹³ A sex offender not only has to jump through these procedural hoops, but their personal information is posted on the sex offender registry website.¹⁹⁴ A sex offender who is convicted of a sex offense that involves a minor is also subject to residency restrictions and exclusion zones.¹⁹⁵

Next are the social and societal implications and effects. In a 2005 study, more than half of responding sex offenders lost a friend as a result of being on the registry.¹⁹⁶ One in every three sex offenders reported being personally harassed and treated rudely in public.¹⁹⁷ In other studies, a small percentage of offenders even reported they were physically assaulted.¹⁹⁸ Sex offenders have difficulty in acquiring housing as well because landlords may deny applications or evict individuals who are sex offenders.¹⁹⁹ Not only does the registry affect the offender, but also the offender's family. SOSEN, Sex Offender Solutions and Education Network, is an organization dedicated to combatting the misinformation and "unwanted hysteria" regarding sex offenders.²⁰⁰ In a SOSEN brochure, a sex offender told his story through the lens of his wife and two children.²⁰¹ In the brochure, the offender's wife says, "My family is just like yours, except we cannot know the joy of a holiday family dinner; my husband is a RSO [(registered sex offender)] and cannot join us because his sibling's children will be there."²⁰² The offender's son sadly articulated, "My family is just like yours, but my Dad can't come to my baseball games or to the school play I was in."²⁰³ Finally, the offender's daughter said, "My dad cannot take me to school or pick me up when I

191. *Id.* § 692A.110(1).

192. *Id.* § 692A.111(1).

193. *Id.* § 692A.106(4).

194. *See id.* § 692A.121.

195. *See id.* § 692A.113.

196. Tewksbury, *supra* note 167, at 76.

197. *Id.*

198. Levenson et al., *supra* note 37, at 590.

199. Michael J. Duster, Note, *Out of Sight, Out of Mind: State Attempts to Banish Sex Offenders*, 53 *DRAKE L. REV.* 711, 715 (2005).

200. *Our Mission*, SOSEN, <http://sosen.org/our-mission> [<https://perma.cc/H9FW-MXPG>].

201. *My Family IS Just Like Your Family*, SOSEN, <http://sosen.org/downloads/brochures/SOSEN%20-%20My%20Family.pdf> [<https://perma.cc/F7N3-AVWU>].

202. *Id.*

203. *Id.*

am sick. This is unfair to ME!”²⁰⁴ Not only are stigma, isolation, and social discomfort serious implications to sex offenders, but also to their families and friends.²⁰⁵ Having some of these effects or burdens for 10 years in Iowa is burdensome enough, let alone individuals who move to Iowa who may face these burdens for much longer or even their entire lives.

VII. CONCLUSION

“No matter how repulsed society is concerning sex offenders, we cannot place offenders in a unique, separate class bereft of constitutional rights”²⁰⁶ Iowa unanimously inched closer and closer to creating a separate class of individuals without constitutional protections by its passage of House File 201.²⁰⁷ The law poses serious constitutional concerns, namely that it imposes on the fundamental right to interstate travel.²⁰⁸ This law ought to be challenged and struck down as unconstitutional. Iowa should revisit whether the sex offender registry is punishment and decide in the affirmative. “[A]lthough the public has an undeniable interest in ensuring public safety and in having the laws of the State enforced, the public has an even greater interest in assuring that constitutional violations are remedied.”²⁰⁹ This statute ought to be challenged and struck down as unconstitutional, because if Iowa can pass one unconstitutional law unanimously, what will stop them from doing it again?

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204. *Id.*

205. *See id.*

206. Duster, *supra* note 199, at 778 (citation omitted).

207. *See* H.F. 201, 89th Gen. Assemb. Reg. Sess. (Iowa 2021).

208. *See supra* Part V.B.

209. Duster, *supra* note 199, at 778 (citation omitted) (alteration in original).

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