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The Plight of the Unpopular Poor: Sex Offender Registration and Notification Costs to Indigent Offenders in Louisiana

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The Plight of the Unpopular Poor: Sex Offender Registration and Notification Costs to Indigent Offenders in Louisiana

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The law as it is currently written sets sex offenders up for failure by pretending that they have the independent financial wherewithal to meet registration requirements within days after their release from prison or have a supportive social community network to help them

finance the fees for registration and notification and to assist them in their reentry into society. Perpetuating such fantasies will not solve these difficult problems. These requirements are practically impossible for offenders to meet and economically unsound for the state's budget.¹

INTRODUCTION

John Smith commits a sex offense when he is 32 years old. Smith has a high school degree and worked a minimum-wage job prior to his arrest.² He spends seven years in prison before the Louisiana Department of Corrections (“DOC”) releases him, gives him \$20, and enough money for a bus ticket to Orleans Parish, as required by law.³ Once in New Orleans, Smith uses most of his savings to rent an apartment.⁴ Smith must now

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1. *State v. Mouton*, 219 So. 3d 1244, 1265 (La. Ct. App. 2017) (Wicker, J., concurring).

2. The hypothetical is a mixture of fiction that would be common to indigent sex offenders and the actual facts from *State v. Jones*, 182 So. 3d 1218 (La. Ct. App. 2015). See also Brief for Petitioner, *State v. Jones*, 182 So. 3d 1218 (2015) (No. 15/KA/0500), 2015 LEXIS 985 at *2–4.

3. LA. REV. STAT. §§ 15:866, 15:866.1 (2018); *Mouton*, 219 So. 3d at 1249. Upon release, an offender receives only enough money for transportation from the prison facility to the in which where he will reside, and up to \$20 on a state-issued J-Pay card, which acts like a debit card. LA. REV. STAT. §§ 15:866, 15:866.1; see also *Mouton*, 219 So. 3d at 1249. Hereinafter, although sex offender laws are applicable to all genders, this Comment will continue to use the male pronoun as research shows males are incarcerated more often for sex offenses than females. *Myths and Facts*, N.Y. ST. DIV. CRIM. JUST. SERVS. (Apr. 2014), http://www.criminaljustice.ny.gov/nsor/som_mythsandfacts.htm [<https://perma.cc/S4PF-422F>]; *Statistics on Perpetrators of Child Sexual Abuse*, NAT'L CTR. FOR VICTIMS CRIME, <http://victimsofcrime.org/media/reporting-on-child-sexual-abuse/statistics-on-perpetrators-of-csa> [<https://perma.cc/69HU-9Y9L>] (last visited Aug. 2, 2018).

4. In a Louisiana correctional facility, like the Louisiana State Penitentiary, an inmate will have an average hourly wage of 4¢ per hour. Personal Interview with Robert Lancaster, Director of Clinical Legal Education, LSU Paul M. Hebert Law Center, in Baton Rouge, La. (Nov. 9, 2017). The national average for inmate hourly pay is 93¢ per hour. Chandra Bozelko, *Giving Working Prisoners Dignity—And Decent Wages*, NAT'L REV. (Jan. 11, 2017), <http://www.nationalreview.com/article/443747/prison-labor-laws-wages> [<https://perma.cc/63GT-SC6U>]. If Smith was indigent prior to prison, his total wages earned during his time in prison may not even add up to enough money to pay for one month's rent. See Personal Interview with Jane Hogan, staff attorney, LSU Law Parole & Reentry Clinic, in Baton Rouge, La. (Nov. 9, 2017).

register as a sex offender with the local sheriff's office and notify the community of his sex offender status to comply with Louisiana law.⁵ With whatever money he has remaining, Smith must pay for a \$60 sex offender registration fee, a new driver's license, and a new state identification card.⁶ The sheriff's office then informs Smith that it will cost him an additional \$580 to comply with the sex offender notification requirements, and he must pay within 21 days from the date that the DOC released him.⁷ Smith knows he cannot afford the total amount and offers to pay \$300 up front and the remaining \$280 later.⁸ The sheriff's office informs Smith that a partial payment plan is not permissible.⁹ The Orleans Parish District Attorney's Office then charges Smith with failure to register as a sex offender.¹⁰

At this point, an Orleans Parish judge convicts Smith and sentences him to four years in prison.¹¹ Recall that only a few weeks prior, Smith finished serving several years in prison for the sex offense itself. Now, having had virtually no time to piece his life back together, he is headed back to prison. The Louisiana Appellate Project¹² appeals the decision.¹³ Two years later, the Louisiana Supreme Court remands the case back to the trial court for failing to conduct an ability-to-pay hearing, which

5. LA. REV. STAT. § 15:542.

6. *Id.*

7. *Id.* § 15:542.1. Smith must pay the cost of mailing notice of his status to his neighbors. Telephone Interview with Leslie Lance, Chief Deputy, Tensas Parish Sheriff's Office (Oct. 10, 2017). *See id.* § 15:542.1.

8. Notification costs to John Smith taken from the facts of *State v. Jones*. *See* Brief for Petitioner, *State v. Jones*, 182 So. 3d 1218 (2015) (No. 15/KA/0500), 2015 LEXIS 985, at *2–4.

9. *State v. Jones*, 182 So. 3d 1218, 1223 (La. Ct. App. 2015) (Wicker, J., dissenting). The current statutes in Louisiana do not provide for the ability to accept partial payment. *See* LA. REV. STAT. § 15:542.

10. *See* Brief for Petitioner, *State v. Jones*, 182 So. 3d 1218 (2015) (No. 15/KA/0500), 2015 LEXIS 985, at *2–4.

11. A first-time offender of failure to register as a sex offender can get from two to ten years imprisonment. *See* LA. REV. STAT. § 15:542.1.4(A)(1).

12. “[The Louisiana Appellate Project is] [f]unded by the Louisiana Public Defender Board (LPDB), the Louisiana Appellate Project provides appellate counsel for indigents in all non-capital felony appeals arising in all of the districts.” *Home*, LA. APP. PROJECT, <http://appellateproject.org/> [<https://perma.cc/K4RY-3JTY>] (last visited Aug. 2, 2018).

13. *See* Brief for Petitioner, *State v. Jones*, 182 So. 3d 1218 (2015) (No. 15/KA/0500), 2015 LEXIS 985, at *2–4.

United States Supreme Court precedent requires.¹⁴ On remand, the trial court finds Smith to be indigent and sentences him to community service.¹⁵ Since Smith has been in prison for two years, he must find a new place to live and go through the registration and notification process *again*.¹⁶ He is penniless and has virtually no ability to comply with the laws. Smith weighs the cost of compliance with the cost of non-compliance.¹⁷ If he attempts to register, but does not have the money required to comply, he may end up in the same situation as before.¹⁸ If he circumvents registration, he may be able to stay out of court and continue his life, but he will return to prison if he is caught.¹⁹ The decision he faces is not uncommon among indigent sex offenders.²⁰

Through registration and notification laws, Louisiana imposes high costs on indigent sex offenders, trapping them in a cycle of imprisonment punctuated by brief releases in which such offenders are effectively doomed to fail.²¹ Aside from the moral dilemma of imprisoning people for being poor, Louisiana's sex offender laws are neither practical nor cost-efficient.²² If the Louisiana Legislature does not reform the current laws,

14. See *Jones*, 206 So. 3d at 871–72 (per curiam); *Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983).

15. *Bearden*, 461 U.S. at 672–73. It is likely that an indigent criminal defendant like Smith would spend his time in prison during the appeals process because he could not afford to post an appeal bond. If Smith could not pay the cost of notification, he would likely not have funds for an appeal bond. For mention of a criminal defendant's release on an appeal bond, see *State v. Boudreaux*, 98 So. 3d 881, 889 (La. Ct. App. 2012).

16. LA. REV. STAT. § 15:542.1.2.

17. See Interview with James Richardson, Director, LSU Public Administration Institute, in Baton Rouge, La. (Sept. 18, 2017).

18. See LA. REV. STAT. § 15:542.1.4(A).

19. See *id.* § 15:542.1.4.

20. Interview with James Richardson, *supra* note 17.

21. See LA. REV. STAT. § 15:542.1.4(A). Even if the offender complies with all requirements except the payment of fees and costs associated with registration and notification, the state can prosecute the offender for failure to register as a sex offender. See Telephone Interview with Leslie Lance, *supra* note 7. See *infra* Part II for discussion regarding the constitutionality of imprisoning indigent offenders for failing to pay a legal financial obligation (“LFO”) such as fees and fines.

22. See *State v. Mouton*, 219 So. 3d 1244, 1262–63 (La. Ct. App. 2017). In Louisiana's current budget climate, lawmakers would likely be amenable to any cost-saving measure that would not jeopardize public safety or their political careers. See, e.g., Greg Hilburn, *Gov. Edwards: Cliff should motivate lawmakers*, NEWS STAR (Mar. 9, 2017), <http://www.thenewsstar.com/story/news/2017/03/09/gov-edwards-cliff-should-motivate-lawmakers/98912116/> [<https://perma.cc/UD6J-F92D>].

imprisonment for the inability to pay could begin to resemble mid-19th century debtor's prisons rather than traditional state penitentiaries.²³

The issues associated with high costs of complying with registration and notification do not stop at financial and moral considerations.²⁴ The purpose of these laws is to protect the public from sexual predators.²⁵ If the cost of compliance is too high, it may incentivize non-compliance, which means unregistered offenders will remain unsupervised and circumvent the legislative policy behind the laws.²⁶

This Comment explores the inadequacies of Louisiana's sex offender registration and notification laws and recommends solutions to fix them. Part I of this Comment provides background on sex offender registration and notification laws in Louisiana. Part II highlights less burdensome sex offender registration and notification laws in other states compared to Louisiana. Part III discusses the shortfalls of constitutional protections for indigent offenders regarding registration and notification fees. Finally, Part IV offers fiscally sound options for the Louisiana Legislature to consider when addressing the problems associated with the state's sex offender registration and notification laws.

I. HISTORY AND EFFECT OF SEX OFFENDER REGISTRATION AND NOTIFICATION LAWS IN LOUISIANA

In response to billowing political pressure following a series of sexually violent murders in the 1990s, legislators around the country adopted laws that created public registries for convicted sex offenders.²⁷ The idea was that, on the one hand, fear of being publicly branded a sex offender would deter sex offenses and, on the other hand, making the public aware that a sex offender lived nearby would encourage vigilant safety precautions in such areas.²⁸ Congress passed the Wetterling Act of

23. See Eli Hager, *Debtor's Prisons, Then and Now: FAQ*, MARSHALL PROJECT (Feb. 24, 2015), <https://www.themarshallproject.org/2015/02/24/debtors-prisons-then-and-now-faq> [<https://perma.cc/M5RH-UUHL>].

24. Interview with James Richardson, *supra* note 17.

25. LA. REV. STAT. § 15:540(B).

26. Interview with James Richardson, *supra* note 17.

27. Jennifer N. Wang, *Paying the Piper; The Cost of Compliance with the Federal Sex Offender Registration and Notification Act*, 59 N.Y.L. SCH. L. REV. 681, 686 (2014–15). Recidivism is defined as “repeated or habitual relapse, as into crime.” *Recidivism*, DICTIONARY.COM, <http://www.dictionary.com/browse/recidivism> [<https://perma.cc/DPH6-7NNL>] (last visited Aug. 2, 2018).

28. See *supra* note 27. Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 LA. L. REV. 509, 518 (2013):

1994,²⁹ Megan’s Law of 1996,³⁰ and the Adam Walsh Child Protection and Safety Act of 2006 (“AWA”).³¹ Within the AWA, Congress enacted the Sex Offender Registration and Notification Act (“SORNA”), which attempted to set national uniform minimum standards for state registries and notification requirements.³² To encourage compliance, Congress threatened to reduce federal law enforcement grants by 10% for any state that did not substantially implement the minimum standards of SORNA.³³ Despite the threat to funding, many states determined that the cost of compliance³⁴ exceeded the benefit of receiving the federal funds.³⁵

Authors of the sex-offender legislation also hoped that registered sex offenders would avoid reoffending for fear that law enforcement’s knowledge of their identities and past offenses would make detection and apprehension particularly likely. Finally, proponents of the legislation argued that providing community members with information about the identity and location of sex offenders would make it easier for members of the public to take steps to protect their children.

29. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 108 Stat. 2038 (1994) (codified as amended at 42 U.S.C. §§ 14071–14703 (2006 & Supp. III 2010)), *repealed by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified as amended at 42 U.S.C. §§ 16901–16991).

30. Megan’s Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (amending 42 U.S.C. § 14071(d) (1994)).

31. Kelsey Meeks Duncan, *A Crime Against Common Sense: How Louisiana’s Implementation of the Adam Walsh Act Exposes the Law’s Most Significant Flaw*, 84 TUL. L. REV. 429, 433–34 (2009); 34 U.S.C. §§ 20901–991 (2012).

32. Wang, *supra* note 27, at 692.

33. *Id.* at 692–93. Specifically, SORNA targeted 10% of non-compliant states’ Edward Byrne Memorial Justice Assistance Grants, which go toward financing law enforcement activities “such as crime control and prevention and criminal justice reform.” *Id.* at 693.

34. *Id.* at 695 (citing *What Will It Cost to Comply with the Sex Offender Registration and Notification Act?*, JUST. POL’Y INST., http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JJ.pdf [https://perma.cc/B5P6-32MJ] (last visited Aug. 2, 2018)). The cost of state compliance with SORNA includes costs in areas such as:

additional personnel; new software installation and maintenance; additional jail and prison space; increased court and administrative needs; law enforcement, including the need to verify information at more frequent intervals; and legislative costs associated with adopting and crafting state laws.

Id.

35. *Id.* at 695 n.105 (citing THE NAT’L CONSORTIUM FOR JUST. INFO. & STAT., *Search Survey on State Compliance with the Sex Offender Registration and*

Although every state currently has sex offender registration and notification laws,³⁶ only 17 states comply with the national standards set in SORNA.³⁷ Louisiana, unlike most states, chose to retain its federal funds and comply with SORNA.³⁸

Louisiana conformed to the requirements of SORNA in 2007, immediately after the AWA passed, and the state's compliance resulted in an increase in the number of offenders required to register and an enhanced registration burden for these offenders.³⁹ The change required an increase in the information reported and lessened the time period for initial registration.⁴⁰ In tandem with the national rationale, Louisiana cited high

Notification Act (SORNA) 3–9 (Apr. 2009), <http://www.search.org/files/pdf/SORNA-StateComplianceSurvey2009.pdf> [<https://perma.cc/J2QZ-CP8Y>] (“States that identified cost or lack of funding as a main barrier to SORNA compliance include: California, Colorado, Florida, Georgia, Maine, Oregon, and West Virginia.”)). The financial cost-benefit decision mirrors and gives credence to the premise that sex offenders make the same cost-benefit analysis when determining whether to comply with the registration and notification laws. *Cf.* Interview with James Richardson, *supra* note 17.

36. See Amanda Y. Agan, *Sex Offender Registries: Fear without Function?*, 54 J.L. & ECON. 207, 208–09 (2011) (finding “little evidence to support the effectiveness of sex offender registries, either in practice or in potential.”); J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & ECON. 161, 192 (2011) (finding that average size sex offender registries paired with notification laws *increase* sex offenses by 1.57%). This Comment does not address the effectiveness of sex offender registration and notification laws in general. It is worth mentioning, however, that many scholars have concluded the effects of registration and notification laws are low.

37. *Fifty State Survey of Adult Sex Offender Registration Requirements*, CTR. FOR SEX OFFENDER MGMT., <http://www.csom.org/pubs/50%20state%20survey%20adult%20registries.pdf> [<https://perma.cc/2KLU-7QJW>] (last visited Aug. 2, 2018); *Jurisdictions that have substantially implemented SORNA*, OFF. SEX OFFENDER SENT’G, MONITORING, APPREHENDING, REGISTERING & TRACKING, https://smart.gov/newsroom_jurisdictions_sorna.htm [<https://perma.cc/EF3X-JREM>] (last visited Oct. 14, 2018). The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (“SMART”) is responsible for determining on a “case-by-case” basis whether each state has substantially implemented SORNA. Wang, *supra* note 27, at 693.

38. OFF. SEX OFFENDER SENT’G, MONITORING, APPREHENDING, REGISTERING & TRACKING, *supra* note 37.

39. *Resume Digest for House Bill 970*, LA. ST. LEGISLATURE, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=450474> [<https://perma.cc/8HAW-LKXB>] (last visited Oct. 14, 2018).

40. *Id.* Previous law required sex offenders to register for either ten years or life, but compliance with SORNA added three interval registration periods: 15

recidivism rates among sex offenders—without providing actual statistics—and a “paramount governmental interest” in protecting the public from reoffenders as the purpose for its registration and notification requirements.⁴¹ Although scholars have provided strong evidence that state legislatures and the U.S. Supreme Court have grossly exaggerated sex offender recidivism rates, most state legislatures, including Louisiana’s, continue to cite an interest in protecting their citizens from the supposedly high re-offense rate of sex offenders as a justification for its strict registration and notification laws.⁴² Sex offender recidivism rates, which admittedly suffer accuracy issues because of sex offense reporting, hover between 5–14% within three to six years following release;⁴³

years, 25 years, and life. *Id.* With the 2007 amendments, juveniles over the age of 14 would have to register for sex offenses. *Id.* The amendments implemented periodic in-person registration and community notification every five years when the offender has not changed his residence. *Id.* Additionally, prior to the amendments, the court could waive registration requirements in felony carnal knowledge cases. *Id.* After the amendments, however, courts could only waive the requirements for offenders who were within four years of age of the victim and the victim was above 13 years of age. *Id.* La. House of Representatives (June 6, 2007), http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house/2007/jun/0606_07_Day22_2007RS (Representative Donald Cazayoux stating that the law is “strictly a compliance with the federal Adam Walsh Act”).

41. S.B. 1111, 1992 Leg., Reg. Sess. (La. 1992); Jill S. Levenson, *Sex Offense Recidivism, Risk Assessment, and the Adam Walsh Act* (unpublished study, Lynn Univ.), http://www.leg.state.vt.us/workGroups/sexoffenders/AWA_SORNsummary.pdf [<https://perma.cc/4M36-YX8F>]; Steven Yoder, *What’s The Real Rate Of Sex-Crime Recidivism?*, PAC. STANDARD (May 27, 2016), <https://psmag.com/news/whats-the-real-rate-of-sex-crime-recidivism> [<https://perma.cc/SGD2-8BU6>].

42. Levenson, *supra* note 41 (the U.S. Supreme Court and state legislatures have previously and at times still use a study that suggested a projected rate of 52%, which overestimated the actual recidivism of the 115 sex offenders in the study); *Smith v. Doe*, 538 U.S. 84, 104 (2003) (citing high, long-term recidivism rates among sex offenders); *McKune v. Lile*, 536 U.S. 24, 34 (2002) (citing “frightening and high” recidivism rates among sex offenders generally). In one study described by the SMART office as “perhaps the largest study of sex offender recidivism conducted to date,” the average recidivism rate of sex offenders within a three-year period was 5.3%. Roger Przybylski, *Chapter 5: Adult Sex Offender Recidivism*, OFF. SEX OFFENDER SENT’G, MONITORING, APPREHENDING, REGISTERING & TRACKING (last visited Aug. 2, 2018) (citing PATRICK LANGAN, ERICA SCHMIT & MATTHEW DUROSE, *RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994* (U.S. Dep’t of Just., 2003)).

43. Levenson, *supra* note 41.

whereas the five-year recidivism rate for state prisons in 30 states was 76.6%.⁴⁴

A. Sex Offender Registration Requirements in Louisiana

Louisiana requires sex offenders to register for different periods of time depending on the severity of their crime: either 15 years,⁴⁵ 25 years,⁴⁶ or life.⁴⁷ Sex offenders in all three tiers must provide extensive personal information to law enforcement and pay for notice to residents living near an offender's home.⁴⁸ Prior to the offender's release from prison, the law

44. Christopher Zoukis, *Report Documents U.S. Recidivism Rates for Federal Prisoners*, HUFFINGTON POST (Mar. 25, 2016), https://www.huffingtonpost.com/christopher-zoukis/report-documents-us-rcid_b_9542312.html [<https://perma.cc/9GZ8-54ZB>].

45. *Offenses*, LA. STATE POLICE PUB. SAFETY SERVS., <http://www.lsp.org/socpr/offenses.html> [<https://perma.cc/6WN7-F5CJ>] (last visited Aug. 2, 2018). Tier 1 offenses, which require 15 years of registration, include: stalking of a victim under 18 years of age (hereinafter a "minor"); simple rape when the victim is under the belief that the victim knows the offender through some inducement by the offender; sexual battery; intentional exposure to AIDS; interference with child custody of a minor (where the offender is not the parent); false imprisonment of a minor; felony carnal knowledge; indecent behavior with juveniles; prohibited sexual conduct between educator and student; crime against nature; contributing to the delinquency of a minor; obscenity through solicitation of a minor; video voyeurism; voyeurism; and employment of minors in theatrical performances or exhibitions. *Id.*

46. *Id.* Tier 2 offenses, which require 25 years of registration, include: sexual battery of a minor; oral sexual battery; human trafficking; pornography including juveniles; molestation of a juvenile or a person with a physical or mental disability; computer aided solicitation of a minor; prostitution involving a minor; solicitation of prostitutes who are minors; inciting prostitution when the person is a minor; promoting prostitution when the person is a minor; pandering when the victim is a minor; and operation of places of prostitution when persons involved are minors. *Id.*

47. *Id.* Tier 3 offenses, which require lifetime registration, include: aggravated rape; forcible rape; simple rape when the victim is incapacitated; sexual battery of a person under the age of 13; second degree sexual battery; aggravated kidnapping of a minor; second degree kidnapping of a minor; aggravated kidnapping of a child under the age of 13; trafficking of children for sexual purposes; aggravated crime against nature; sexual battery of the infirmed; and certain instances of molestation of a minor or person with a physical or mental disability. *Id.*

48. LA. REV. STAT. § 15:542(C) (2018); *id.* § 15:542.1. Sexually violent predators and child sexual predators are subject to more stringent requirements such as lifetime electronic monitoring. *Id.* § 15:560.3. In Louisiana, sex offenders also have restrictions regarding where they can physically be, which translates to

enforcement agency charged with overseeing the offender must inform him of his duties under the registration and notification laws.⁴⁹ The sex offender must provide his: name; residential address; place of employment; school address if applicable; two proofs of residency; driver's license; state identification card; current photograph; phone numbers; Social Security number; description of his physical characteristics; all internet identifiers such as e-mail, usernames, etc.; DNA sample; finger prints; and palm prints.⁵⁰ Three business days after the prison releases the offender,⁵¹ he must report to the sheriff's office in the parish in which he resides to provide this information.⁵² If the offender's residence is within an incorporated area that has a police department or if the offender lives in a city with over 300,000 persons, he must register with the chief of police as well as the sheriff's office within the three days.⁵³

Additionally, each offender must pay a \$60 registration fee.⁵⁴ In a concurring opinion, Judge Fredericka Wicker of the Louisiana Fifth Circuit Court of Appeal recently wrote that Louisiana's registration statute contains language that she believes suggests the \$60 registration fee could be waivable.⁵⁵ No other Louisiana court appears to have discussed whether the registration fee is indeed waivable.⁵⁶ Although Judge Wicker does not mention the statutory language that implicates the possibility for waiver, she was likely referring to a provision in the law that does not allow law enforcement to prevent registration because the offender did not pay the registration fee.⁵⁷ It is more likely, however, that the statute allows for registration without the fee on the initial deadline because the statute

restrictions on where they can live. *Id.* § 14:91.2. The restrictions include bans on being physically present within a certain distance of schools, public parks, recreational facilities, child care centers, and group homes. *Id.*

49. *Id.* § 15:543(B).

50. *Id.* § 15:542(C).

51. *Id.* If the prisoner is not immediately imprisoned upon conviction or adjudication, he must comply with the registration requirements within three business days of his conviction or adjudication. *Id.*

52. *Id.*

53. *Id.* § 15:542(B)(1).

54. *Id.* § 15:542(D).

55. *State v. Mouton*, 219 So. 3d 1244, 1261 (La. Ct. App. 2017) (Wicker, J., concurring).

56. *Id.* at 1261.

57. *Id.* (citing LA. REV. STAT. § 15:542(D), which reads "[t]he offender shall not be prevented from registering in accordance with this Section for failure to pay the annual registration fee").

provides a 30-day grace period for payment of the fee before the State can bring criminal sanctions against the offender.⁵⁸

Depending on the offender's tier, he must continuously register throughout the 15-year, 25-year, or lifetime registration requirement.⁵⁹ Re-registration deadlines range from every 14 days for homeless sex offenders to annual re-registration for other offenders.⁶⁰ In sum, Louisiana's registration requirements surpass the minimum standards set out in SORNA.⁶¹

B. Community Notification Requirements in Louisiana

Within 21 days of his release from prison, the law requires a sex offender⁶² to mail notice of his presence to at least one person in every residence within three-tenths of a mile of the offender's home for urban and suburban areas and within one mile of his home for rural areas.⁶³ The offender must pay for the mail with either a flat fee the parish determines or a fee based on the exact mailing costs.⁶⁴ The sheriff's office then forwards the money to OffenderWatch, the company used to host the

58. See LA. REV. STAT. § 15:542(D).

59. LA. STATE POLICE PUB. SAFETY SERVS., *supra* note 45.

60. LA. REV. STAT. § 15:542.1.1(A). Homeless offenders must re-register with the sheriff's office every 14 days. *Id.* § 15:542.1.1(A)(4)(a). Any offender who has committed a sex offense twice or committed rape must re-register in person every three months. *Id.* § 15:542.1.1(A)(1). Any sex offense against a minor requires re-registration in-person every six months. *Id.* § 15:542.1.1(A)(2).

61. Compare Sex Offender Registration and Notification Act, Pub. L. No. 109-248, 120 Stat. 590 (2006) (codified as amended at 42 U.S.C. §§ 16901-62), with LA. REV. STAT. § 15:542.

62. LA. REV. STAT. § 15:542.1(C). "Active" community notification is not applicable to juvenile sex offenders, with one exception. *Id.* A juvenile sex offender need not mail notice to those near him, but he must post notice of his status if he "provides recreational instruction to persons under the age of seventeen." *Id.* § 15:542.1(B)(1). "Recreational instruction" is defined as "instruction or lessons on noneducational activities." *Id.* § 15:542.1(B)(2).

63. *Id.* § 15:542(A)(1)(a).

64. See Telephone Interview with Leslie Lance, *supra* note 7. Small parishes, like Tensas Parish, may choose to impose a flat fee because of the small population. Larger Parishes will calculate the price according to how many residences the government must notify. See Brief for Petitioner, *State v. Jones*, 182 So. 3d 1218 (2015) (No. 15/KA/0500), 2015 LEXIS 985, at *2-4. The offender in *Jones* originally had to pay \$1,200 for registration and notification fees in Orleans Parish, most of which would have been notification costs. *Id.* The notification fees in Jefferson Parish were \$580 likely because the offender moved to an area with less population density. *Id.*

internet registry, and OffenderWatch mails the postcard notifications for the offender.⁶⁵ The mailed notification must include “notice of the crime for which [the sex offender] was convicted, his name, residential address, a description of his physical characteristics . . . and a photograph or copy thereof.”⁶⁶ Additionally, the offender must give notice to others: (1) the superintendent of the school district in which he resides; (2) his lessor or owner of the property on which he resides; and (3) the superintendent of any park, playground, or recreation districts within the radius required for mailing notice.⁶⁷ The sex offender must undergo the notification process every five years, whether or not he has moved from his initial residence.⁶⁸ Any change in residence requires the offender to once again mail notice of his status to all residences within the designated area surrounding his home.⁶⁹

II. SURVEY OF SEX OFFENDER REGISTRATION AND NOTIFICATION LAWS

To accomplish purported public-safety goals, most states publish sex offender registries, or instruct law enforcement agencies to notify the public when an offender moves into a neighborhood.⁷⁰ Different states regulate the funding for the registries, responsibility for the notifications, and public accessibility of the registries in various ways.⁷¹ Some states—such as Louisiana and Utah—allow complete access to a sex offender’s registration information through the online server OffenderWatch.⁷² Other states, like Vermont, require an individual to “articulate a specific concern about their safety or the safety of another” to receive information about an

65. Telephone Interview with Leslie Lance, *supra* note 7.

66. LA. REV. STAT. § 15:542.1(A)(1).

67. *Id.* § 15:542.1(A)(1)(b)–(d).

68. *Id.* § 15:542.1(A)(2)(b).

69. *Id.* § 15:542.1.2(E)(1). This requirement is especially difficult for indigent sex offenders if they must move multiple times during the time they are required to comply.

70. CTR. FOR SEX OFFENDER MGMT., *supra* note 37.

71. *Five Myths About Sex Offender Registries*, ABC NEWS (July 6, 2005), <http://abcnews.go.com/US/LegalCenter/story?id=90201> [<https://perma.cc/EE4L-9H8G>]. For a baseline of sex offender information made available to the public, see Sex Offender Registration and Notification Act, Pub. L. No. 109-248, 120 Stat. 590 (2006) (codified as amended at 42 U.S.C. §§ 16901–62).

72. *State Sex Offender & Child Predator Registry*, LA. ST. POLICE, <http://www.lsp.org/socpr/disclaimer.html> [<https://perma.cc/K2PY-CXQX>] (last visited Aug. 2, 2018); *Sex and Kidnap Offender Notification and Registration*, UTAH DEP’T CORRECTIONS, http://sheriffalerts.com/cap_main.php?office=54_438 [<https://perma.cc/HB3D-F8KU>] (last visited Aug. 3, 2018).

offender.⁷³ With notification laws, states either employ a “passive” notification system, which places the burden on the public to search for sex offenders, or an “active” notification system, which requires a government agency or the offender to warn the public of his presence.⁷⁴ The two notification systems greatly vary in cost, with “passive” notification systems costing the state and the offender less.⁷⁵ The type of notification laws and registration fees influence an indigent offender’s ability to comply with the law.

A. Registration and Notification Cost-Effectiveness in Louisiana

Louisiana’s registration and notification laws not only require extensive information from the sex offender, but can also reach a combined cost of \$1,300 to the offender within 30 days of being released from prison.⁷⁶ For an indigent offender, these costs are nearly impossible to pay.⁷⁷ The registration fee costs \$60.⁷⁸ The offender must also obtain a new driver’s license and state identification card within the initial three days.⁷⁹ A state identification card costs \$18–\$24 and a driver’s license costs \$32.25–\$38.25.⁸⁰

73. *Sex Offender Registry*, VT. CRIME INFO. CTR., <http://vcic.vermont.gov/sor> [<https://perma.cc/DK6N-RPGG>] (last visited Aug. 2, 2018).

74. *Community Notification*, CTR. FOR SEX OFFENDER MGMT., http://www.csom.org/pubs/cap/6/6_2.htm [<https://perma.cc/5AV7-72YK>] (last visited Aug. 3, 2018).

75. *See infra* Part III.B.

76. *State v. Mouton*, 219 So. 3d 1244, 1261 (La. Ct. App. 2017) (Wicker, J., concurring).

77. *Id.* at 1265.

78. *See id.* at 1261–62. The deadline for the \$60 registration fee is technically three days, however, the law affords the offender 30 days following his initial registration to pay the \$60 before the state can bring criminal sanctions. LA. REV. STAT. § 15:542(D) (2018).

79. LA. REV. STAT. § 15:542(C)(j). The law does not provide a grace period for obtaining the identification cards like it does for the registration fee. *See id.* § 15:542. If the offender fails to pay the \$60 fee, he could be charged with an additional maximum fine of \$500, imprisonment up to six months, or both. *Id.* § 15:542.1.4(A)(3).

80. *Mouton*, 219 So. 3d at 1262. A sex offender must obtain a new driver’s license following release because the law requires the Louisiana Department of Motor Vehicles to indicate that the person is a sex offender on the license. LA. REV. STAT. § 32:412(I)(1). The offender must also acquire a special state identification card, which, like the driver’s license, has the words “SEX OFFENDER” printed in all capital letters on the card. *Id.* § 40:1321(J)(1).

The largest financial burden, however, comes from the notification laws.⁸¹ Within 21 days of the offender's release, he must pay the mailing cost to notify every residence within the legally required radius around his home.⁸² In an urban area, a sex offender may have to pay nearly \$1,000 to notify his neighbors.⁸³ He must also pay for two days of newspaper advertisements, which in Jefferson or Orleans Parish cost \$193.50.⁸⁴ Apart from failing to pay the \$60 registration fee, if an offender does not comply with either the registration or notification requirements, the state can prosecute the sex offender for failing to properly register. Just over one month after the sex offender's release, he will have had to pay \$300–\$1,300 depending on where he lives, or risk returning to prison.⁸⁵ An indigent sex offender likely has no personal financial means to pay these costs, nor is it likely that he has family or friends willing to help him with finances.⁸⁶

The financial requirements of registration and notification especially affect offenders who will be homeless upon release.⁸⁷ Although sex offenders who have not served their maximum sentence length cannot be released into homelessness, those who have completed the full term of their sentence *must* be released from prison, *with or without a residence plan*.⁸⁸ Therefore, an indigent sex offender—who may be homeless—must comply or attempt to comply with the registration and notification requirements to avoid returning to prison.⁸⁹ If the offender is homeless, he

81. *Mouton*, 219 So. 3d at 1261.

82. LA. REV. STAT. § 15:542.1(A)(2)(a).

83. *Mouton*, 219 So. 3d at 1261. The burdensome cost of notification in urban areas such as New Orleans or Baton Rouge can be explained by these areas' high population densities. 2010 CENSUS: LA. PROFILE, U.S. CENSUS BUREAU (2010), https://www2.census.gov/geo/maps/dc10_thematic/2010_Profile/2010_Profile_Map_Louisiana.pdf [<https://perma.cc/A6QM-KKNQ>].

84. *Mouton*, 219 So. 3d at 1261.

85. *Id.*; LA. REV. STAT. § 15:542.1.4(A).

86. *Mouton*, 219 So. 3d at 1265.

87. *Id.* at 1262.

88. *Id.* at 1263.

89. Confronting the issue of homeless sex offenders would be particularly difficult under Louisiana's budget constraints because the state would likely have to create special community shelters to house the offenders. *Cf. id.* at 1264. Utah runs five community correctional facilities for sex offenders who are struggling financially and who are in the transition stage between exiting prison and re-entering society. *See id.*; *About Community Correctional Centers*, UTAH DEP'T CORRECTIONS, https://corrections.utah.gov/index.php?option=com_content&view=category&id=25&Itemid=189 [<https://perma.cc/R5QK-HCH8>] (last visited Aug. 3, 2018). The centers help offenders earn money and stabilize their finances before

must re-register in person with the sheriff's office every 14 days; if he lives in homelessness within multiple parishes, he must check in with each sheriff's office in each parish every 14 days.⁹⁰ Not only do the costs imposed on sex offenders post-release burden an offender's reintegration into society, but the current legal regime created to prevent indigent offenders from returning to jail for lack of finances also provides little protection to Louisiana offenders.⁹¹

B. Registration Fees and Deadlines

There is little consistency among states as to the amount charged to an offender for registration. For example, Georgia charges a \$250 annual fee,⁹² Delaware charges a \$30 annual fee,⁹³ and Michigan charges a one-time \$35 fee;⁹⁴ in contrast, California does not allow law enforcement agencies to charge offenders *any* fees for registration.⁹⁵ The widely varying fee arrangements among states give little indication as to whether each state, when fixing the amount of the fee, considered law enforcement costs or the offender's ability to pay.⁹⁶ Colorado's sex offender registration statute, however, explicitly considers law enforcement expenditures when implementing registration and notification laws by directly tying the amount of the fee to the costs law enforcement incurs.⁹⁷ Although

reentering society. *See Mouton*, 219 So. 3d at 1264. Before considering solutions to sex offender homelessness in Louisiana, the Legislature would likely inquire into the number of homeless sex offenders, the risk they pose to society, and the cost required to provide remedies. Although the benevolent legislative path would include providing a transition housing system, like Utah, the Louisiana Legislature will be extremely concerned about any increased expenditures. *See Hilburn*, *supra* note 22. As a result, any reforms regarding homeless sex offenders will likely not be possible until Louisiana has a more stable budget.

90. LA. REV. STAT. § 15:542.1.1(A)(4)(a).

91. *See infra* Part IV.

92. GA. CODE ANN. § 42-1-12 (f)(14) (2018).

93. DEL. CODE ANN. 11 § 4120 (g)(3) (2018).

94. *Sex Offender Registry: Summary of Legislation*, MICHIGAN.GOV (June 30, 2011), https://www.michigan.gov/documents/SOR_Legislation_Summary_122883_7.pdf [<https://perma.cc/57HD-KYDE>].

95. CAL. PENAL CODE § 290.012(d) (2018).

96. *See, e.g.*, GA. CODE ANN. § 42-1-12 (f)(14); IDAHO CODE ANN. § 18-8307 (2) (2018); DEL. CODE ANN. 11 § 4120 (g)(3).

97. COLO. REV. STAT. § 16-22-108 (7)(a) (2018) ("The amount of the fee shall reflect the actual direct costs incurred by the local law enforcement agency in implementing the provisions of this article but shall not exceed seventy-five

Colorado's registration fee cannot exceed \$75 for initial registration and \$25 for subsequent registrations,⁹⁸ the concept of allowing law enforcement to set the registration fee by tying costs to expenses provides a semblance of the legislative thought process in determining fee amounts.⁹⁹ Most notably, Colorado allows its law enforcement agencies to waive the registration fees for indigent offenders, whereas most other states do not have waiver provisions.¹⁰⁰

The deadlines for registration also vary among states, but most states fall into one of two categories: (1) states in which the offender registers with local law enforcement *after* release; and (2) states in which the offender registers *before* release, with the government agency overseeing the process within the prison.¹⁰¹ For example, Alabama requires registration seven days after release from prison,¹⁰² and Georgia, like Louisiana, has a three-day registration deadline.¹⁰³ Alaska sex offenders register 30 days before release, while in prison.¹⁰⁴ Delaware requires registration to occur 45–90 days before the offender's release.¹⁰⁵ The variations in amount of time given for each state's deadline depend on whether the state wishes to comply with SORNA, which sets the deadline for initial registration at three days post-release.¹⁰⁶ Registration prior to release may ease the burden on an offender who would have to travel to a local law enforcement office to register post-release,¹⁰⁷ but the timing of registration does little for indigent offenders if registration fees are particularly high, like in Georgia,¹⁰⁸ or if the registration laws do not allow for partial payment of the fee, like in Louisiana.¹⁰⁹

dollars for the initial registration with the local law enforcement agency and twenty-five dollars for any subsequent annual or quarterly registration.”).

98. *Id.* § 16-22-108 (7)(a).

99. *Cf. id.* § 16-22-108.

100. *Id.* § 16-22-108 (7)(b).

101. *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-3821(Q) (2018); ARK. CODE ANN. § 12-12-906(c)(ii) (2018); IDAHO CODE ANN. § 18-8307(4)(a); LA. REV. STAT. § 15:542 (C)(2) (2018).

102. ALA. CODE § 15-20A-10(a)(2) (2018).

103. GA. CODE ANN. § 42-1-12(f)(2) (2018).

104. ALASKA STAT. § 12.63.010(a)(1) (2018).

105. DEL. CODE ANN. 11 § 412(b)(1) (2018).

106. Sex Offender Registration and Notification Act, Pub. L. No. 109-248, 120 Stat. 590 (2006) (codified as amended at 42 U.S.C. §§ 16901–62).

107. *Cf.* LA. REV. STAT. § 15:542 (2018).

108. GA. CODE ANN. § 42-1-12(f)(14).

109. *State v. Jones*, 182 So. 3d 1218, 1223 (La. Ct. App. 2015) (Wicker, J., dissenting).

C. Notification Costs

Louisiana is the only state that requires sex offenders to bear the entire cost of community notification,¹¹⁰ which can become expensive because offenders must pay to *mail* notice.¹¹¹ All other states require law enforcement agencies, not the offender, to bear the cost of notifying the public regarding sex offenders,¹¹² which substantially lessens the financial burden on indigent offenders and the chances that financial costs will affect the possibility that the offender will recidivate.¹¹³

Many states do not require notification of registration to be physically mailed, but instead allow “notification” to occur constructively through the public posting of details about an offender to an online database.¹¹⁴ In Wyoming, citizens may sign up to receive notifications when a sex offender moves near their home or to track a specific offender.¹¹⁵ Virginia similarly allows e-mail communication for those who sign up for the automated notification, but it also allows individuals to request the notification be mailed to them.¹¹⁶ Unlike Louisiana, in Virginia, the offender does not pay the postage fee; rather, the requester must pay for

110. See, e.g., W. VA. CODE § 15-12-5 (2018); OHIO REV. CODE ANN. § 2950.11 (2018); ALA. CODE § 15-20A-21(b) (2018); R.I. PAROLE BD. SEX OFFENDER CMTY. NOTIFICATION UNIT, SEXUAL OFFENDER COMMUNITY NOTIFICATION GUIDELINES (2014), <http://www.paroleboard.ri.gov/documents/SEXUAL%20OFFENDER%20COMMUNITY%20NOTIFICATION%20-%20FINAL%202014.pdf> [<https://perma.cc/F355-EDE6>].

111. LA. REV. STAT. § 15:542.1(2)(a); *State v. Mouton*, 219 So. 3d 1244, 1263 (La. Ct. App. 2017) (Wicker, J., concurring). Expenses for the physical mailing of notice can range from \$300 up to \$1,000. *Id.*

112. See, e.g., *supra* note 110. Other than Tennessee, which imposes a minimal, one-time notification fee, Louisiana is the only state that statutorily ties a cost or fee to the notification process. TENN. CODE ANN. § 40-39-217(a)(2) (2018); LA. REV. STAT. § 15:542.1.

113. *Cf. Mouton*, 219 So. 3d at 1261.

114. See *Sex Offender Frequently Asked Questions*, WYO. DIV. CRIM. INVESTIGATION, <http://wyomingdci.wyo.gov/dci-criminal-justice-information-systems-section/sor-faqs> [<https://perma.cc/G5XR-LXEY>] (last visited Oct. 30, 2018); *Frequently Asked Questions*, VA. ST. POLICE, <http://sex-offender.vsp.virginia.gov/sor/faq.html#Question7> [<https://perma.cc/36PC-TMXM>] (last visited Aug. 3, 2018); *Mouton*, 219 So. 3d at 1265. “The community receives notification through Utah’s sex offender registration website, which allows any citizen to request that an e-mail alert be sent to him anytime an offender moves into his neighborhood.” *Id.*

115. *Sex Offender Frequently Asked Questions*, *supra* note 114.

116. *Frequently Asked Questions*, *supra* note 114.

the mailing.¹¹⁷ The cost-efficiency of electronic communication can save state resources that would otherwise be used in having law enforcement actively notify the community.¹¹⁸

Indeed, most states with “active” notification requirements place the burden of notification on law enforcement.¹¹⁹ For example, Alabama law enforcement must mail or hand-deliver a flyer with the sex offender’s address to all residents within a statutorily determined distance.¹²⁰ Delaware gives its local law enforcement agencies leeway with how to notify the public, but still requires the agencies to do so without specifying how to fund these efforts.¹²¹ Colorado, however, focuses its “active” notification efforts on sexually violent predators (“SVP”) and uses “passive” notification for all other sex offenders.¹²² Concerned citizens may register online to receive e-mail notifications of a sex offender’s location by zip code.¹²³ The Colorado Legislature mandated, however, that law enforcement actively notify citizens of SVPs.¹²⁴ Such notification includes notifying three groups: (1) the victim; (2) specific agencies, organizations, and groups that fit the SVP’s “identified pattern of

117. *Id.*

118. *Cf.* ALA. CODE § 15-20A-21(b) (2018).

119. *See, e.g., supra* note 110.

120. ALA. CODE § 15-20A-21(b).

121. DEL. CODE ANN. 11 § 4121(a)(1) (2018). Delaware’s law has no indication of how law enforcement agencies are expected to pay for the expenditure. The statute provides a permissive list of notification methods:

Methods of notification may include, but not be limited to, door-to-door appearances, mail, electronic mail, telephone, fax, newspapers or notices, or any combination thereof, to schools, licensed day care facilities, public libraries, any other organization, company or individual upon request, and other accessible public facilities within the community.

Id.

122. *See* COLO. REV. STAT. § 16-13-903 (2018); *Notifications*, COLO. BUREAU OF INVESTIGATION, <https://apps.colorado.gov/apps/dps/sor/notifications.jsf> [<https://perma.cc/2LN3-UZWE>] (last visited Aug. 2, 2018).

123. COLO. BUREAU INVESTIGATION, *supra* note 122. The registry does not, however, contain the information of persons guilty of a misdemeanor sex offense or juvenile sex offenders. *Id.*

124. COLO. REV. STAT. § 16-13-901 (“[S]exually violent predators pose a high enough level of risk to the community that persons in the community should receive notification concerning the identity of these sexually violent predators.”). Colorado defines “sexually violent predator” as a person who is above the age of 18—or a juvenile tried as an adult—who committed certain sexual offenses listed in the state’s relevant statute. *Id.* § 18-3-414.5. The statute also requires community notification for offenders other states classified as sexually violent predators by other states. *Id.* § 16-13-903.

behavior”; and (3) the immediate neighborhood of the SVP by way of a public meeting.¹²⁵ If local law enforcement agencies determine their communities or the SVP’s behavioral pattern require broader community notification, they may hold broader-based community meetings or notify the public through print or broadcast media.¹²⁶

The high cost of “active” notification calls into question the cost-effectiveness of the method when used on all levels of sex offenders.¹²⁷ States like Colorado that preserve “active” communication for more dangerous sex offenders may receive the highest returns on their financial investment by lowering the burden on most offenders and shifting attention toward those more likely to recidivate.¹²⁸ The community notification and registration laws provide only slight direction for Louisiana, whose comprehensive, burdensome requirements merit specifically tailored changes necessary to survive the unpopularity of sex offender legislation and maintain the goals of the original legislation.

III. CONSTITUTIONAL PROTECTIONS FAIL TO ADEQUATELY PROTECT LOUISIANA’S INDIGENT OFFENDERS FROM RETURNING TO PRISON BECAUSE OF AN INABILITY TO PAY

In 1983, the U.S. Supreme Court ruled that states generally cannot imprison an indigent offender for failing to pay a legal financial obligation

125. COLO. SEX OFFENDER MGMT. BD., CRITERIA, PROTOCOLS & PROCEDURES FOR COMMUNITY NOTIFICATION REGARDING SEXUALLY VIOLENT PREDATORS 39–40 (Nov. 1999).

126. *Id.*

127. *The Registration And Community Notification Of Adult Sexual Offenders*, ASSOC. FOR THE TREATMENT OF SEXUAL ABUSERS, <http://www.atsa.com/registration-and-community-notification-adult-sexual-offenders> [https://perma.cc/K9C9-PFDN] (last visited Aug. 2, 2018) (“Public safety can be enhanced, and limited resources used more efficiently, when the most active notification practices are reserved for those offenders who are at highest risk to reoffend sexually and therefore require the most intensive interventions.”).

128. *Id.* (“By classifying offenders into risk groups based on the existence of known risk factors, communities may be able to more accurately identify those sex offenders who pose the greatest threat to public safety. At the same time, differential notification strategies can improve cost-effectiveness.”).

(“LFO”)¹²⁹ after the offender made a “sufficient bona fide effort”¹³⁰ to acquire the funds to pay the fine or fee.¹³¹ In *Bearden v. Georgia*, the defendant was sentenced to probation in lieu of imprisonment for burglary and theft charges.¹³² When he lost his job and was unable to find another, the defendant, who was illiterate and limited to a ninth-grade education, could not pay his probationary fines.¹³³ As a result, a Georgia trial court revoked his probation, a court of appeals affirmed the trial court’s decision, and the Georgia Supreme Court denied review.¹³⁴ The U.S. Supreme Court granted certiorari to decide whether imprisoning an indigent offender for failing to pay an LFO violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.¹³⁵

The Court concluded that “it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available” when the defendant made “reasonable efforts to pay the fine or restitution, and yet cannot do so through no fault of his own.”¹³⁶ The Supreme Court found that the Fourteenth Amendment requires courts first to inquire into the reasons for a defendant’s inability to pay.¹³⁷ If the defendant willfully refused to pay or make a “sufficient bona fide effort” to legally acquire funds to pay the fine, the court may imprison the defendant.¹³⁸ The state has the burden to show that the offender willfully refused to pay the fee or did not make bona fide efforts to obtain resources to pay the fee.¹³⁹ This burden requires

129. *Legal Financial Obligations (LFOs)*, COUNCIL ST. GOV’TS JUST. CTR., <https://csgjusticecenter.org/courts/legal-financial-obligations/> [<https://perma.cc/CA/P8-DFK7>] (last visited Aug. 2, 2018). The definition of LFOs would include “a fine, victim restitution, and appointed attorney reimbursement, as well as fees for supervision, program participation, electronic monitoring, confinement, health care in confinement, and more.” *Id.*

130. *Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983). The Court did not define what conduct equated to “sufficient bona fide efforts.” *Id.*; Jaclyn Kurin, *Indebted to Injustice: The Meaning of “Willfulness” in a Georgia v. Bearden Ability to Pay Hearing*, 27 GEO. MASON U. CIV. RTS. L.J. 265, 293–94 (2017).

131. *Bearden*, 461 U.S. at 672–73; *see also* *State v. Jones*, 206 So. 3d 871, 871–72 (La. 2017) (per curiam).

132. *Bearden*, 461 U.S. at 662.

133. *Id.* at 662–63. The Court noted that the defendant had no income or assets at the time he failed to pay these fines. *Id.* at 663.

134. *Id.*

135. *Id.* at 663–65.

136. *Id.* at 668–69.

137. *Id.* at 672.

138. *Id.*

139. Kurin, *supra* note 130, at 293–94.

evidence beyond an offender's failure to pay a fee or fine.¹⁴⁰ If the defendant failed to pay because of his indigence, the court *must* look at alternative forms of punishment and imprison the defendant "[o]nly if [the] alternative measures are not adequate to meet the State's interests in punishment and deterrence."¹⁴¹ Such alternative measures the Court suggested included extending the time for making payments, reducing the amount of the fine, or enforcing community service.¹⁴²

A. *The Application of Bearden in Louisiana*

Bearden should protect indigent offenders in Louisiana who cannot pay the costs associated with registration and notification.¹⁴³ The decision should also protect offenders who cannot afford to obtain a driver's license or state identification card,¹⁴⁴ as well as offenders who cannot afford the mailing or newspaper advertisement costs associated with notification.¹⁴⁵ The Louisiana judiciary's application of *Bearden*, however, causes its protections to fall short for most Louisiana sex offenders.¹⁴⁶

Courts have historically ignored *Bearden* in a number of ways: by "(1) not conducting an ability-to-pay hearing, (2) omitting procedural stages of an ability-to-pay hearing, and (3) erroneous interpretations."¹⁴⁷ Some states have statutes that require courts to hold hearings to determine an indigent offender's ability to pay.¹⁴⁸ Louisiana does not have such a statute, which requires courts habitually to enforce *Bearden* so that it

140. *Id.* The state must show that the offender "willfully refused to pay . . . despite having means to pay[, or] that the offender has not actively tried to find employment or obtain money legally from other resources." *Id.*

141. *Bearden*, 461 U.S. at 672–73.

142. *Id.* Although the *Bearden* Court only mentions fines and restitution, the decision has been widely accepted to cover all LFOs, including sex offender registration and notification fees. Kurin, *supra* note 130, at 293–94 (citing *Bearden*, 461 U.S. at 672).

143. *State v. Jones*, 206 So. 3d 871, 871–72 (La. 2017) (per curiam). See Kurin, *supra* note 130, at 276–77.

144. *Tyler v. State*, 69 So. 3d 961, 965 (Fla. Dist. Ct. App. 2011) (finding that *Bearden* applied to the requirement to obtain a driver's license). The defendant in that case failed, however, to make a showing that he had tried to update his license "but was unable to do so because he could not pay the associated fee despite his reasonable efforts." *Id.*

145. COUNCIL ST. GOV'TS JUST. CTR., *supra* note 129.

146. Kurin, *supra* note 130, at 288.

147. *Id.*

148. *Id.* (citing generally OHIO REV. CODE ANN. § 2947.14 (West 2002)). These hearings are often called "ability-to-pay" hearings. *Id.*

becomes common in criminal proceedings.¹⁴⁹ Judicial enforcement, without a legislative directive, has left some indigent defendants with inconsistent constitutional protections.¹⁵⁰

The facts of *State v. Jones* best illustrate this problem, as the facts were the basis for the hypothetical discussed in the Introduction to this Comment.¹⁵¹ Tori Jones attempted to pay his sex offender notification costs in installments, but the sheriff's office did not allow him to make partial payment.¹⁵² A trial court then convicted Jones for failure to register as a sex offender, and it was two years before the Louisiana Supreme Court ordered the trial court to comply with *Bearden* and conduct an ability-to-pay hearing.¹⁵³ Had there been a statute requiring such a hearing, Mr. Jones may not have undergone a two-year appellate process,¹⁵⁴ and the circuit court would have been likely able to immediately identify the legislative mandate for a hearing.¹⁵⁵ Although *Bearden* aims to protect indigent offenders who attempt to comply with the law, the lack of statutory enforcement in Louisiana lessens *Bearden*'s effectiveness.¹⁵⁶

The Louisiana Supreme Court has issued only 23 opinions regarding *Bearden* and indigent offenders, each of which contained only one or two paragraphs of text.¹⁵⁷ *Jones* is the court's first opinion addressing the topic

149. *State v. Jones*, 206 So. 3d 871, 871–72 (La. 2017) (per curiam). A recent per curiam decision from the Louisiana Supreme Court evidences the lack of statutory authority in Louisiana, as the only citation given for an ability-to-pay hearing was that of *Bearden. Id.*

150. *See, e.g., State v. Turner*, 217 So. 3d 601, 610–11 (La. Ct. App. 2017).

151. *See supra* Introduction.

152. Brief for Petitioner, *State v. Jones*, 182 So. 3d 1218 (2015) (No. 15/KA/0500), 2015 LEXIS 985, at *2–4.

153. *Jones*, 206 So. 3d at 871–72.

154. It is unclear whether Jones was in prison during the appeals process.

155. *Cf. Kurin, supra* note 130, at 288.

156. *See id.*

157. *Jones*, 206 So. 3d at 871–72; *State v. Canterberry*, 747 So. 2d 37 (La. 1999); *State v. Zabaleta*, 689 So. 2d 1369 (La. 1997); *State v. Pratt*, 671 So. 2d 328 (La. 1996); *State v. Roebuck*, 657 So. 2d 1009 (La. 1995); *State v. Foster*, 637 So. 2d 1039 (La. 1994); *State ex rel. Harrison v. Jeane*, 617 So. 2d 482–83 (La. 1993) (per curiam); *State v. Roberts*, 600 So. 2d 596 (La. 1992); *State ex rel. Gant v. State*, 576 So. 2d 517 (La. 1991); *State ex rel. Teat v. State*, 576 So. 2d 998 (La. 1991); *State v. Monson*, 576 So. 2d 517, 517–18 (La. 1991); *State ex rel. Rodriguez v. State*, 576 So. 2d 518 (La. 1991); *State ex rel. Morales v. Court of Appeal Third Circuit*, 575 So. 2d 1389 (La. 1991); *State ex rel. Foret v. State*, 575 So. 2d 1389 (La. 1991); *State ex rel. Armstead v. State*, 589 So. 2d 1050 (La. 1991); *State v. Conley*, 570 So. 2d 1161 (La. 1990) (per curiam); *State v. Abney*, 571 So. 2d 638, 638–39 (La. 1990); *State v. Harris*, 502 So. 2d 1093 (La. 1987); *State v. Williams*, 484 So. 2d

since 1999.¹⁵⁸ Most of the opinions remanded the case to the trial court to determine whether the defendant was indigent or, based on the record, overturned portions of a judgment that failed to consider the defendant's inability to pay.¹⁵⁹ Although most Louisiana courts appear to properly apply *Bearden* on a regular basis,¹⁶⁰ several trial courts within Louisiana's Second Circuit continue to issue judgments without considering the defendant's indigence.¹⁶¹ Louisiana's Second Circuit Court of Appeal has repeatedly overruled or remanded unconstitutional sentences that failed to consider a defendant's ability-to-pay.¹⁶² Specifically, since 2013, there have been nine reported decisions within the Second Circuit in which trial courts did not apply *Bearden*.¹⁶³ The U.S. Supreme Court mandated that trial courts determine the indigence of an offender in 1983, yet the Second Circuit trial courts continue to forget.¹⁶⁴ Therefore, Louisiana courts require further direction or a legislative reminder of *Bearden's* requirements.¹⁶⁵ Without statutory authority guiding lower courts, appellate courts will likely continue to expend resources on reviewing such cases, which will consistently result in the reversal or remand of the trial court's decision.¹⁶⁶

662 (La. 1986) (per curiam); *State v. Pinkney*, 488 So. 2d 682 (La. 1986); *State v. Grant*, 490 So. 2d 272 (La. 1986); *State v. Garrett*, 484 So. 2d 662 (La. 1986) (per curiam).

158. *Jones*, 206 So. 3d at 871–72.

159. *Supra* note 157.

160. *State v. Jones*, 182 So. 3d 1218 (La. Ct. App. 2015). The Fifth Circuit Court of Appeal's decision in *State v. Jones* was an aberration among the circuits. *Id.* It will likely not happen again following the Louisiana Supreme Court's per curiam response. *Jones*, 206 So. 3d at 871–72 (per curiam).

161. *See, e.g., State v. Turner*, 217 So. 3d 601, 610–11 (La. Ct. App. 2017).

162. *See State v. Lee*, 243 So. 3d 1133, 1140 (La. Ct. App. 2017); *State v. Turner*, 217 So. 3d 601, 610–11 (La. Ct. App. 2017); *State v. Modique*, 186 So. 3d 283, 288–89 (La. Ct. App. 2016); *State v. Anderson*, 162 So. 3d 547, 549 (La. Ct. App. 2015); *State v. Hooter*, 162 So. 3d 532, 538–39 (La. Ct. App. 2015); *State v. Baker*, 148 So. 3d 217, 228–29 (La. Ct. App. 2014); *State v. Percy*, 137 So. 3d 184, 193 (La. Ct. App. 2014); *State v. Gilbert*, 136 So. 3d 995, 998 (La. Ct. App. 2014); *State v. Allen*, 117 So. 3d 311, 315 (La. Ct. App. 2013).

163. *See supra* note 162.

164. *Bearden v. Georgia*, 461 U.S. 660 (1983).

165. *See, e.g., Allen*, 117 So. 3d at 315.

166. *See, e.g., Modique*, 186 So. 3d at 288–89; *State v. Morales*, 221 So. 3d 257, 258–59 (La. Ct. App. 2017).

B. Enforcing Bearden Through Legislative Direction

Bearden covers offenders who make a good faith attempt to pay, but it does not protect indigent sex offenders who fail to contact local law enforcement to explain their inability to pay registration and notification costs.¹⁶⁷ As such, *Bearden*'s protections do not consider the practical implications of the high financial burden Louisiana's sex offender laws impose.¹⁶⁸ Many indigent offenders likely are so discouraged by the prospect of paying what could be over \$1,000 in costs for registration and notification that the offenders do not contact the authorities to discuss how to comply.¹⁶⁹ The high financial burden may outweigh the benefits of compliance with the law, which could incentivize offenders to circumvent registration and notification.¹⁷⁰ When that happens, policy analysts, judges, and legislators should ask whether Louisiana's registration and notification laws accomplish their stated rationale of public safety.¹⁷¹

To ensure compliance with *Bearden*, Louisiana should enact a statute that requires courts to conduct an ability-to-pay hearing when an offender claims indigence as the reason for his inability to pay registration or notification costs. A legislative mandate would save appellate court resources spent remanding and reversing convictions that disregard an offender's indigence.¹⁷² Additionally, such a mandate would both save state money and further protect indigent offenders, even if the legislature

167. *Bearden*, 461 U.S. at 672–73. In *Mouton*, Judge Wicker concurred with the majority that the defendant did not have a valid constitutional defense because “[t]here [was] no evidence in the record that Mr. Mouton made any attempt to fulfill the registration requirements the law obligated him to fulfill.” *State v. Mouton*, 219 So. 3d 1244, 1261 (La. Ct. App. 2017) (Wicker, J., concurring).

168. *See supra* Part IV. *Bearden* also does not provide direction to legislatures as to how states should inform indigent sex offenders that they cannot go to jail for simply being poor. Offenders may choose to circumvent the law because of a lack of knowledge regarding their constitutional rights. Some sheriff's offices will help the offender with transportation if indigence or mobility poses a problem, but neither the law nor practice indicates there is no indication in the law or in practice that indigent offenders know how to prove they did not willfully violate the law. *See Mouton*, 219 So. 3d at 1251.

169. *Mouton*, 219 So. 3d at 1263. *Cf.* Interview with James Richardson, *supra* note 17.

170. *See* Interview with James Richardson, *supra* note 17.

171. *See* LA. REV. STAT. § 15:540 (2018); Interview with James Richardson, *supra* note 17.

172. *See, e.g.*, *State v. Modique*, 186 So. 3d 283, 288–89 (La. Ct. App. 2016); *State v. Morales*, 221 So. 3d 257, 258–59 (La. Ct. App. 2017).

did not address the financial burdens of Louisiana sex offender registration and notification laws.¹⁷³

IV. HOW TO ADDRESS LOUISIANA'S HIGH REGISTRATION AND NOTIFICATION COSTS FOR INDIGENT OFFENDERS

By forcing indigent offenders to pay notification costs, Louisiana places the financial burdens of a comprehensive sex offender registration and notification system in a unique manner.¹⁷⁴ In other states that employ “active” notification regimes, the government pays the cost of notifying the public.¹⁷⁵ The Louisiana Legislature would likely have little appetite for completely covering sex offender registration and notification costs because of the state’s current budget crisis.¹⁷⁶ Since 2016, the legislature has convened for multiple legislative sessions each fiscal year in attempts to close recurring budget gaps.¹⁷⁷ Although Louisiana currently has a budgetary surplus, many budgetary issues remain.¹⁷⁸

173. At the least, Louisiana should inform sex offenders prior to their release on how they must attempt to acquire the funds to pay for registration *and* go to the sheriff’s office to explain their inability to pay, if such is the case. This way the offender will have preserved a defense to the charge that he willfully refused to comply with the registration statutes. *See Mouton*, 219 So. 3d at 1261.

174. *See, e.g.*, W. VA. CODE § 15-12-5 (2018); R.I. PAROLE BD. SEX OFFENDER CMTY. NOTIFICATION UNIT, SEXUAL OFFENDER COMMUNITY NOTIFICATION GUIDELINES (2014), <http://www.paroleboard.ri.gov/documents/SEXUAL%20OFFENDER%20COMMUNITY%20NOTIFICATION%20-%20FINAL%202014.pdf> [<https://perma.cc/F355-EDE6>]; OHIO REV. CODE ANN. § 2950.11 (2018); ALA. CODE § 15-20A-21 (b) (2018).

175. *See, e.g., supra* note 174.

176. *See, e.g., Hilburn, supra* note 22.

177. *See* Julia O’Donoghue, *Louisiana Legislature leaves Capitol with budget -- and little else*, TIMES-PICAYUNE (June 20, 2017), http://www.nola.com/politics/index.ssf/2017/06/louisiana_legislature_leaves_b.html [<https://perma.cc/H9LR-4UVQ>]; Sam Karlin, *Special session inevitable as \$313M midyear shortfall looms, officials say*, GREATER BATON ROUGE BUS. REP. (Jan. 13, 2017), <https://www.businessreport.com/article/special-session-inevitable-313m-midyear-short-fall-looms-officials-say> [<https://perma.cc/9XW7-UNRB>]; Tyler Bridges, *What now? Louisiana legislators ‘kick the can’ on budget, taxes to next year*, ADVOCATE (June 25, 2016, 3:26 PM), https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_e883d816-3777-5a55-b869-f736d5ce83ed.html [<https://perma.cc/UJ8Q-68T7>].

178. Melinda Deslatte, *Louisiana's budget surplus doesn't signal full recovery: economist*, ASSOCIATED PRESS (Sept. 25, 2018), https://www.nola.com/politics/index.ssf/2018/09/economist_louisiana_surplus.html [<https://perma.cc/J58S-REWT>].

In particular, Louisiana's high incarceration rate affects the legislature's budget decisions because of the sheer cost associated with it.¹⁷⁹ In Fiscal Year 2017, incarceration costs equated to \$287.9 million.¹⁸⁰ The average cost per prisoner, per day among all state prisons in Louisiana is \$49.60, which totals to \$18,104 per prisoner per year.¹⁸¹ These high costs were one of the catalysts for Louisiana's criminal justice reform legislation the legislature passed in the 2017 legislative regular session,¹⁸² these high costs could also help convince legislators to support changes to sex offender laws if the amendments produce the possibility of long-term savings and increase or maintain public safety. The cost to the state of imprisoning sex offenders for failing to pay these registration and notification fees far outweighs the price for the state to cover registration and notification costs on a per-offender basis.¹⁸³ Absorbing a sex offender's costs entirely is, however, an almost impossible solution

179. FY17-18 Executive Budget Review Department of Corrections, House Committee on Appropriations, Louisiana House of Representatives Fiscal Division (Apr. 6, 2017), http://house.louisiana.gov/housefiscal/DOCS_APP_BDGT_MEETINGS/DOCS_APPBudgetMeetings2017/April/DOCPublicfinal%20-%20Copy.pdf [<https://perma.cc/2S9H-3JVX>].

180. *Id.*

181. *Id.*

182. Rebekah Allen, *Conservative business groups help carry criminal justice reforms to victory in Louisiana legislature*, ADVOCATE (June 10, 2017), http://www.theadvocate.com/baton_rouge/news/politics/legislature/article_44a74e46-4d2b-11e7-ac26-d748ea6f3b24.html [<https://perma.cc/FS38-2PED>]. Conservative groups led the effort to pass the 2017 criminal justice reform after helping Texas reform its system to reduce prison population growth and reduce state spending. *Id.* Louisiana's reform package should save the state \$262 million over the next ten years. Adam Gelb, Terry Schuster & Emily Levett, *Louisiana Adopts Landmark Criminal Justice Reforms: New laws expected to reduce reoffending, save millions of dollars*, PEW CHARITABLE TRS. (June 22, 2017), <http://www.pewtrusts.org/en/research-and-analysis/analysis/2017/06/22/louisiana-adopts-landmark-criminal-justice-reforms> [<https://perma.cc/SUY3-Y9FR>]. Seventy percent of those savings will be reinvested into projects focused on reducing recidivism. *Id.*

183. *State v. Mouton*, 219 So. 3d 1244, 1261 (La. Ct. App. 2017) (Wicker, J., concurring). The cost of complying with registration and notification fees can range from a few hundred dollars to over \$1,000. *Id.* Notification must only occur every five years or if the offender moves residences. LA. REV. STAT. § 15:542.1(A)(2)(b) (2018). Therefore, a sex offender is only responsible for \$60 annually during the periods in which notification is not required. *Id.* § 15:542(D). The average cost of imprisoning an offender in an in-state facility for one year is \$18,104, which is \$18,044 more than the cost of the annual sex offender registration fee. House Committee on Appropriations, Louisiana House of Representatives Fiscal Division, *supra* note 179.

because it would increase short-term budgetary spending.¹⁸⁴ Therefore, Louisiana state legislators should look for options that do not add costs to the state.

A. Amending the Registration Process

Registration laws require more practical monetary and timeline requirements. First, the Louisiana Legislature must acknowledge the problems associated with Louisiana's three-day registration requirement.¹⁸⁵ Judge Wicker of the Louisiana Fifth Circuit Court of Appeal has addressed the policy issues deriving from the current sex offender legal regime.¹⁸⁶ Judge Wicker's most persuasive argument is how burdensome the three-day registration period is on indigent offenders.¹⁸⁷ The laundry list of requirements and associated fees make compliance nearly impossible for a homeless or indigent sex offender.¹⁸⁸ To lessen this burden, the legislature could apply practical, revenue-neutral solutions that also comply with SORNA's national minimum standards: such as (1) requiring one identification card instead of a driver's license *and* state identification card;¹⁸⁹ (2) prolonging the required date of registration; and (3) allowing sex offenders to pay the registration fee in installments.¹⁹⁰

184. See *Mouton*, 219 So. 3d at 1261 (Wicker, J., concurring). The total cost per offender for registration and notification can range from \$300 to \$1,000. *Id.* Louisiana currently has 9,387 active sex offenders, which could cost the state hundreds of thousands of dollars to absorb all registration and notification costs. E-mail Interview with Louisiana State Police Sex Offender Registry (Oct. 25, 2017).

185. LA. REV. STAT. § 15:542(C)(2).

186. *Mouton*, 219 So. 3d at 1261; *State v. Jones*, 182 So. 3d 1218, 1223 (La. Ct. App. 2015) (Wicker, J., dissenting).

187. See *Mouton*, 219 So. 3d at 1262.

188. *Id.*

189. LA. REV. STAT. § 15:542(C).

190. The Louisiana Legislature could follow Colorado's lead and give sheriff's offices the ability to waive the registration fee for indigent offenders. COLO. REV. STAT. § 16-22-108(7)(b) (2018). The state general fund would not be affected because the registration fees stay with the sheriff's offices instead of going to the state. Therefore, the only government entity losing money by waiving fees would be the sheriff's office. See Telephone Interview with Leslie Lance, *supra* note 7.

1. Requiring One Identification Card

The current requirement for providing two forms of identification cards is duplicative.¹⁹¹ According to the Louisiana Department of Motor Vehicles, a state identification card is an “alternative” form of identification to a driver’s license.¹⁹² A state identification card accomplishes the same functions as a driver’s license.¹⁹³ The only situation in which an offender should have to obtain a state identification card is if the offender does not qualify for a driver’s license because he cannot drive a vehicle. The combined cost of obtaining a driver’s license and state identification card, both of which indicate the person’s status as a sex offender,¹⁹⁴ can total \$62.25.¹⁹⁵ If the state required only one identification card,¹⁹⁶ the cost to the offender would be cut in half, making it more likely that he could afford to comply with the initial registration requirements.¹⁹⁷

191. LA. REV. STAT. § 15:542(C)(1)(j).

192. *Identification Cards in Louisiana*, DMV.ORG, <https://www.dmv.org/louisiana/id-cards.php> [<https://perma.cc/KD99-JTNF>] (last visited Aug. 8, 2018).

193. *Id.* (“If you do not have a driver’s license, a Louisiana identification (ID) card can be used as an alternative form of photo identification. You can use a Louisiana ID card to prove your age and identity in a number of situations, including voting, making bank transactions, enrolling in college, and buying age-restricted items.”).

194. *See* LA. REV. STAT. § 32:412 (I)(1); *id.* § 40:1321 (J)(1).

195. *State v. Mouton*, 219 So. 3d 1244, 1262 (La. Ct. App. 2017) (Wicker, J., concurring).

196. Louisiana would also remain SORNA-compliant because the national standards only require one identification card. Sex Offender Registration and Notification Act, Pub. L. No. 109-248, 120 Stat. 590 (2006) (codified as amended at 42 U.S.C. §§ 16901–62).

197. *See* LA. REV. STAT. § 15:542(C); *Mouton*, 219 So. 3d at 1262.

2. Prolonging the Required Date of Registration

Louisiana matches SORNA's registration deadline and gives sex offenders three days¹⁹⁸ to complete the initial registration deadline,¹⁹⁹ but Louisiana can extend the initial deadline and still comply with SORNA, which allows substantial compliance rather than complete compliance.²⁰⁰ Not all states that use SORNA's national standards have implemented the three-day deadline.²⁰¹ Louisiana would likely still substantially comply with SORNA even if it extended the registration deadline past SORNA's recommended three days.²⁰² The state could work with the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking before amending the deadline to ascertain whether any newly proposed amendment would affect the determination that the state has substantially implemented SORNA.²⁰³ In legislating an appropriate

198. Louisiana originally allowed sex offenders 30 days to register after being released from prison. Act No. 388, 1992 La. Acts 1181 (1992) (codified at LA. REV. STAT. § 15:542 (1992)). Subsequently, the Louisiana Legislature shortened the deadline to 21 days, then 10 days, and then to its current 3-day requirement. Act No. 1150, 1999 La. Acts 3055 (1999) (codified at LA. REV. STAT. § 15:542 (1999)); Act No. 791, 2006 La. Acts 2755 (2006) (codified at LA. REV. STAT. § 15:542 (2006)); Act No. 460, 2007 La. Acts 2526 (2007) (codified at LA. REV. STAT. § 15:542 (2007)).

199. Sex Offender Registration and Notification Act, Pub. L. No. 109-248, 120 Stat. 590 (codified as amended at 42 U.S.C. §§ 16901–62); LA. REV. STAT. § 15:542 (C)(2).

200. See ALA. CODE § 15-20A-10(a)(2) (2018).

201. The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking considers Alabama as one of the states that substantially implemented SORNA, even though the state uses a seven-day registration deadline. See OFF. SEX OFFENDER SENT'G, MONITORING, APPREHENDING, REGISTERING & TRACKING, *supra* note 37; ALA. CODE § 15-20A-10(a)(2).

202. Ensuring compliance to receive the Edward Byrne Memorial Justice Assistance Grant Program money would be paramount for some legislators as the state could receive \$5 million–\$7 million from the program. See *Awards Made for "Edward Byrne Memorial Justice Assistance Grant Program,"* U.S. DEP'T JUST., <https://external.ojp.usdoj.gov/selector/title?solicitationTitle=Edward%20Byrne%20Memorial%20Justice%20Assistance%20Grant%20Program&po=All> [<https://perma.cc/2RVE-FGDY>] (last visited Mar. 31, 2018).

203. THE NATIONAL GUIDELINES FOR SEX OFFENDER REGISTRATION AND NOTIFICATION 10 (2008), https://ojp.gov/smart/pdfs/final_sornaguidelines.pdf [<https://perma.cc/VSX4-VLKK>] ("The substantial implementation standard does, however, contemplate that there is some latitude to approve a jurisdiction's implementation efforts, even if they do not exactly follow in all respects the specifications of SORNA or these Guidelines.").

deadline for registration, the Louisiana Legislature should consider the amount of time necessary for an offender to obtain funds to pay for a driver's license and the \$60 registration fee, given the economic realities of being released from prison and likely being unemployed.²⁰⁴ The outer limit for SORNA-compliant states, at the moment, is likely seven days.²⁰⁵ Although seven days may not be enough to acquire the funds the current statutes require, if Louisiana adopts the suggested changes herein, seven days would be an improvement from the current deadline and allow Louisiana to remain SORNA-compliant.²⁰⁶

3. Allowing Offenders to Pay Registration Fees in Installments

In *Bearden*, the U.S. Supreme Court suggested that extending the time to pay registration fees was an appropriate alternative remedy when an indigent offender made sufficient bona fide efforts to acquire funds to pay the fine.²⁰⁷ Allowing sheriff's offices to implement installment plans for offenders to pay registration fees would save the judiciary the time and effort required: (1) to adjudicate criminal charges against the offender; (2) to determine whether the offender is indigent; and (3) to order the sheriff's office to extend the period for payment as an alternative remedy.²⁰⁸ District attorneys' offices would not waste resources prosecuting an indigent offender who failed to pay the \$60 registration fee,²⁰⁹ only to have a court apply *Bearden's* alternative remedy requirement.²¹⁰ A deferred payment plan would further save Louisiana circuit courts' time and effort expended hearing cases in which an offender is charged for failure to register and the trial court fails to grant the offender an ability-to-pay hearing.²¹¹

204. Another option, which would eliminate the need for offenders to travel to a sheriff's office to register, would be to allow offenders to register with the Department of Corrections before they are released from prison. *See* ALASKA STAT. § 12.63.010(a)(1) (2018). Such a system would ensure that all offenders are initially registered, but it does not address how payment of the registration fee could be processed. As the \$60 could not be obtained while in prison, pre-release registration may not be beneficial to Louisiana's registration system.

205. ALA. CODE § 15-20A-10(a)(2).

206. *Id.*

207. *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

208. *Id.*

209. LA. REV. STAT. § 15:542(D) (2018).

210. *Bearden*, 461 U.S. at 672.

211. *See, e.g., State v. Modique*, 186 So. 3d 283, 288–89 (La. Ct. App. 2016); *State v. Morales*, 221 So. 3d 257, 258–59 (La. Ct. App. 2017). The details of a deferred payment plan would require significant input from sheriff's offices around the state in order to determine their capabilities and suggestions. Additionally,

B. Amending the Notification Process

Louisiana's notification process is the most burdensome financial cost imposed on sex offenders in the nation.²¹² Compliance with the law is almost impossible for indigent offenders in urban areas,²¹³ and Louisiana is the only state in the Union that requires offenders to bear the entire cost of community notification.²¹⁴ To address Louisiana's unrealistic notification requirements, the legislature should repeal the newspaper notice requirement and move to an online-only notification system for parishes that meet certain population prerequisites.

1. Newspaper Notice in a Digital World

Newspaper circulation has declined over the past decade with only 20% of Americans consuming news primarily from print newspapers.²¹⁵ Additionally, most Louisiana newspapers are subscription-based,²¹⁶ which means Louisiana residents that do not pay for the paper would not see the published notice that sex offenders are required to purchase.²¹⁷ Publishing notice in the newspaper in Jefferson Parish and Orleans Parish costs \$193.50.²¹⁸ The high cost the advertisement requirements impose is inefficient, considering 80% of residents will never see the notice, and the cost potentially encourages offenders to circumvent the notification requirements because of the financial burden.²¹⁹ As such, the Louisiana

considerable research would be required to understand how the constraints of indigence would affect a sex offender's ability to pay under certain deadlines.

212. *State v. Mouton*, 219 So. 3d 1244, 1261 (La. Ct. App. 2017) (Wicker, J., concurring).

213. *Id.* at 1262.

214. *See, e.g., supra* note 110.

215. *How Americans Get Their News*, PEW RES. CTR. (July 7, 2016), <http://www.journalism.org/2016/07/07/pathways-to-news/> [<https://perma.cc/8VP-V-LYE8>]. *See* Derek Thompson, *The Print Apocalypse and How to Survive It*, ATLANTIC (Nov. 3, 2016), <https://www.theatlantic.com/business/archive/2016/11/the-print-apocalypse-and-how-to-survive-it/506429/> [<https://perma.cc/A7WY-F3CE>].

216. *See, e.g., New Orleans Times-Picayune Subscriptions*, NEWSPAPER DELIVERY, http://www.timespicayunesubscription.com/?source=microg&gclid=CjwKCAjw64bPBRApEiwAJhG-flkm0c3DUMeDQfaQySa4qcTsRgaJHredriDEzrBeVzww2Fqm-uaYmRoCxM0QAvD_BwE [<https://perma.cc/9ULN-5LTA>] (last visited Aug. 2, 2018).

217. *Mouton*, 219 So. 3d at 1261.

218. *Id.*

219. *See* Interview with James Richardson, *supra* note 17.

Legislature should repeal the newspaper public notice requirement because the policy behind the law is not accomplished.

2. *Online-Only Community Notification*

In addition to receiving notice by physical mail, Louisiana citizens may register to receive e-mail notifications that offenders live or have moved near their homes.²²⁰ Electronic notification makes mail notification duplicative because concerned individuals can register digitally.²²¹ In fact, Louisiana's e-mail notification process provides the address for sex offenders within two miles of a person's residence, twice the distance covered by the mailing requirements in even the most rural areas.²²² If the legislature chose to use only Louisiana's internet and e-mail notification system, instead of mailing notice, it would save indigent sex offenders from having to pay hundreds of dollars in notification costs.²²³ Electronic notification's increased efficiency would not only make notification more affordable for offenders,²²⁴ thereby decreasing any incentive to circumvent the notification requirement,²²⁵ but would also not affect the number of residents receiving notification.²²⁶ Rather, the wider range of notification may provide heightened awareness of offenders in residential areas and accomplish the rationale behind the notification laws, if the government prioritizes the already existing online system.²²⁷

220. *Check Your Area*, JEFFERSON PARISH SHERIFF'S OFF., <http://www.icrimewatch.net/register.php?AgencyID=54245&disc=> [https://perma.cc/9MRT-CLSF] (last visited Aug. 8, 2018). The state website has separate pages for each parish, which directs the user to a parish-specific search engine that allows the user to search offenders by location, name, city, non-compliance, internet name, e-mail, or phone number. *Offender Search*, LA. ST. POLICE, <http://www.icrimewatch.net/louisiana.php> [https://perma.cc/WKR7-WDCK] (last visited Aug. 8, 2018); *see, e.g., Offender Search*, CAMERON PARISH SHERIFF'S OFF., <http://www.icrimewatch.net/index.php?AgencyID=54395> [https://perma.cc/CJ69-5ZH5] (last visited Aug. 8, 2018).

221. The mailed notice provides no additional information than the sex offender registry provides online. LA. ST. POLICE, *supra* note 220.

222. OffenderWatch e-mail notification from the East Baton Rouge Parish Sheriff's Office (Oct. 13, 2017); LA. REV. STAT. § 15:542.1(A)(1) (2018).

223. Sex offender notification costs can range from \$100 to \$1,000. *Mouton*, 219 So. 3d at 1261 (Wicker, J., concurring).

224. *See* Interview with James Richardson, *supra* note 17.

225. *Id.*

226. *Supra* note 222.

227. *Supra* note 222.

A complete shift from “active” notification to “passive” online notification, however, is unlikely. In 2016, Louisiana State Representative Walt Leger proposed a bill—wholly unrelated to sex offender registration and notification—to make online applications with the Louisiana Secretary of State the *exclusive* means for required filings of certain commercial documents,²²⁸ such as contracts for partnership and articles of incorporation.²²⁹ The legislation underwent considerable criticism from rural senators who argued that large portions of their districts did not have internet access:

We got lots [sic] of folks in my part of the country that do not have any access to computers. It’s not because they don’t want it, it’s because they can’t get it, but we can’t seem to get that message across to you folks that’s [sic] making the decisions down there. So I hope you check with AT&T and everyone in this state that provides that access so you’ll understand who don’t [sic] have availability [sic] to it. . . . I would encourage you to slow down and understand what’s in the state and what’s not in the state.²³⁰

The Secretary of State’s office and legislators worked behind closed doors to amend the bill to address the concerns rural legislators raised.²³¹ The resulting legislation, which eventually passed and became law, allowed for the complete transition to online-only commercial filings for parishes with populations over 100,000.²³²

The online commercial filings legislation serves both as a warning and a framework for reforming Louisiana’s sex offender notification laws.²³³ The attempt to make online filings the exclusive means for certain business

228. HB 876, 2016 Leg., Reg. Sess. (La. 2016). Representative Walt Leger brought the legislation on behalf of Louisiana Secretary of State Tom Schedler. *See Louisiana State Senate Broadcast Archives*, LA. ST. SENATE (May 5, 2016), http://senate.la.gov/video/videoarchive.asp?v=senate/2016/05/051116S~G_0 [https://perma.cc/AB77-99P5]. Before the proposition, the Secretary of State’s office allowed for commercial filings to be completed in-person or online. HB 876, 2016 Leg., Reg. Sess. (La. 2016).

229. HB 876, 2016 Leg., Reg. Sess. (La. 2016). *See* LA. REV. STAT. § 9:3402 (2018); *id.* § 12:1-120.

230. LA. ST. SENATE, *supra* note 228 (Senator James Fannin discussing his concerns with the proposition to only allow online commercial filings).

231. *See* LA. ST. SENATE, *supra* note 228.

232. Act. No. 554, 2016 La. Acts 1828. Parishes with 100,000 or fewer persons were still given the option to file online or in-person. *Id.*

233. *See* HB 876, 2016 Leg., Reg. Sess.

documents failed because of concerns over internet accessibility.²³⁴ Rural internet access remains problematic in Louisiana,²³⁵ and an attempt to notify the public about sex offenders exclusively through online means would likely fail just as the original version of House Bill 876 failed.²³⁶ If the legislature proposed, however, to exclusively apply online-only sex offender community notification in areas over 100,000 persons,²³⁷ the legislation *may* receive the support of rural legislators concerned about internet access. Rural offenders would still have to mail notification, but the costs associated with rural community notification are low because of the lower population density, thus parishes with rural populations often impose a flat fee instead of a fee based on the actual mailing costs.²³⁸ If offenders in parishes with populations over 100,000 paid no notification fee, rural offenders would have to pay at least \$100 more than other offenders.²³⁹ If the legislature wanted to resolve the resulting financial inequity,²⁴⁰ it could: (1) charge a small notification fee to all sex offenders

234. See LA. ST. SENATE, *supra* note 228.

235. AT&T's 2017 initiative to work toward increased access in Grant Parish and other underserved rural areas evidences the lack of internet access in Louisiana. *AT&T Launches New High-Speed Internet in Grant Parish and other Rural and Underserved Areas in Louisiana*, AT&T LA. TEAM (Sept. 7, 2017), <https://engage.att.com/louisiana/blog/?PostId=4294> [<https://perma.cc/K7WH-XQUH>]. "AT&T announced that some residents in parts of Grant Parish are included in the initial rural and underserved locations in Louisiana to which AT&T has extended Fixed Wireless Internet as part of its FCC Connect America Fund commitment." *Id.*

236. See LA. ST. SENATE, *supra* note 228.

237. Although this requirement would only cover 14 of Louisiana's 67 parishes, it provides proper protection for indigent offenders in all parishes with significant urban populations. See *Louisiana Population by Parish – total residents*, US-PLACES.COM, <http://www.us-places.com/Louisiana/population-by-Parish.htm> [<https://perma.cc/6MPG-M5DZ>] (last visited Aug. 2, 2018).

238. See Telephone Interview with Leslie Lance, *supra* note 7.

239. See *State v. Mouton*, 219 So. 3d 1244, 1261 (La. Ct. App. 2017) (Wicker, J., concurring). In Tensas Parish, the flat fee for notification is \$110. Telephone Interview with Leslie Lance, *supra* note 7.

240. Solving the inequity between rural and urban sex offenders is not necessary. Rural people have not been classified as a "suspect class" or a "quasi-suspect class"; therefore, a court would judge an equal protection claim against Louisiana under the rational basis test. *Equal Protection*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/equal_protection [<https://perma.cc/2EU6-GQ8V>] (last visited Aug. 8, 2018). "If the classification has some 'reasonable basis,' it does not offend the [Equal Protection Clause]." *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 175 (1980) (citing *Lindsley v. Nat. Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)). Louisiana has a reasonable basis for this geographic

to spread the cost of rural notification over all offenders; or (2) use the recent criminal justice reform's savings to pay for rural community notification.²⁴¹

Louisiana's current notification regime exemplifies a legislative goal to notify residents who are actively concerned about sex offenders in their neighborhoods as well as those who are not actively concerned.²⁴² The "active" notification to residents within three-tenths of a mile or one mile of a sex offender, however, only has a certain degree of effectiveness.²⁴³ It fails to notify those who live outside the notification radius—children riding bikes in the neighborhood, families walking the dog, or people jogging throughout the neighborhood.²⁴⁴ But widening the statutory radius for mailing requirements would only exacerbate the financial burden of notification that reform aims to remedy.²⁴⁵ As discussed above, the e-mail notification process doubles the area covered for community notification.²⁴⁶ If the government used electronic notifications instead of mailing notice in parishes with more than 100,000 residents, it could increase the incentive for sex offenders in those areas to comply with the law because of the lower financial burden imposed.

If Louisiana legislators have reservations about online-notification for all types of sex offenders, they could look to Colorado for means of notifying the community about higher-risk sex offenders, such as sexually violent predators and child sexual predators.²⁴⁷ Rather than requiring

distinction based on the higher risk of non-compliance with sex offender laws from urban and suburban offenders who must bear an extremely high cost to comply with the notification requirements. Additionally, because of the low costs to rural offenders compared to the costs imposed on urban and suburban offenders, the law is not irrational and would survive an Equal Protections Clause attack. *See id.* at 176 (citing *Jefferson v. Hackney*, 406 U.S. 535, 549 (1972)).

241. Gelb, Schuster & Levett, *supra* note 182. The 2017 criminal justice reform will bring \$262 million over ten years. *Id.* The legislature intends to use \$183 million of the \$262 million in savings to reinvest in the criminal justice system. *Id.*

242. LA. REV. STAT. § 15:542.1 (2018).

243. *See* Interview with James Richardson, *supra* note 17.

244. *Id.*

245. At a certain point, the cost of compliance becomes too burdensome and outweighs the risk of the consequences associated with failing to register. *Id.*

246. OffenderWatch e-mail notification from the East Baton Rouge Parish Sheriff's Office (Oct. 13, 2017); LA. REV. STAT. § 15:542.1(A)(1).

247. Considering the legislature already created harsher registration requirements for both sexually violent predators *and* child sexual predators, it is likely that if legislators chose to actively notify the public about sexually violent

sexually violent predators and child sexual predators to pay for community notification,²⁴⁸ law enforcement could, like Colorado, notify (1) victims; (2) specific agencies, organizations, and groups that fit the offender's "identified pattern of behavior"; and (3) the immediate neighborhood of the offender by way of a public meeting.²⁴⁹ Although active notification would require law enforcement to expend additional resources, law enforcement could work to find affordable ways to accomplish the objectives; the benefits of assuring that sexually violent predators or child sexual predators comply with registration and notification laws justifies any small increase in law enforcement spending because of the possibility that a great financial burden to these offenders would encourage reoffending, and because it assures that law enforcement will be able to monitor these offenders during the required registration and notification periods.²⁵⁰

CONCLUSION

The unrealistically high costs of registration and notification for Louisiana indigent sex offenders make compliance nearly impossible.²⁵¹ Although empirical evidence shows little benefit to sex offender registration and notification laws in reducing recidivism,²⁵² the Louisiana Legislature will likely not repeal its registration and notification regime because legislation that would aid sex offenders may not be popular with the general public. Constitutional protections provide little help to indigent sex offenders who are so discouraged by the financial burdens imposed that they do not attempt to comply with the laws.²⁵³ The solution lies in reducing the

predators, they would also apply active notification to child sexual predators. LA. REV. STAT. § 15:560.3.

248. As the electronic monitoring requirement evidences, the legislature has an interest in law enforcement tracking sexually violent predators and child sexual predators. *Id.* § 15:560.3. If the high cost of complying with notification laws encourages non-compliance, the law fails to achieve the legislature's objective and the most dangerous offenders go unwatched. *State v. Mouton*, 219 So. 3d 1244, 1263 (La. Ct. App. 2017).

249. *Colo. Sex Offender Mgmt. Board Criteria, Protocols and Procedures for Community Notification Regarding Sexually Violent Predators* 39–40 (Nov. 1999).

250. See Daniel J. Neller & Giovanni Petris, *Sexually Violent Predators: Toward Reasonable Estimates of Recidivism Base Rates*, 31 BEHAV. SCI. LAW 429, 429 (2013) (finding higher recidivism rates among SVPs than the general population of sex offenders).

251. See discussion *supra* Part III.

252. See Agan, *supra* note 36, at 208–09; Prescott & Rockoff, *supra* note 36, at 182.

253. See discussion *supra* Part IV.

costs to indigent sex offenders so they are encouraged to comply with the registration and notification requirements. If the current financial burden of the laws incentivizes non-compliance,²⁵⁴ it creates safety issues by having offenders circumvent registration. Such lack of compliance could cost the State thousands of dollars in prosecuting and imprisoning non-compliant offenders. In order to protect the public and prevent undue burden on the indigent sex offender, Louisiana should extend the initial registration deadline, allow deferred payment of fees, require only one identification card, repeal the newspaper notice requirement, and implement an online-only notification regime in parishes with populations over 100,000. Deferred payment of registration costs and decreased notification costs can provide Louisiana the necessary reforms to ensure that it is financially possible for sex offenders to abide by state law. Such reforms comport with moral and fiscal responsibilities the Louisiana Legislature owes to its citizenry, which does indeed include sex offenders.

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254. See Interview with James Richardson, *supra* note 17.

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