

APPENDIX

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APPENDIX A

*This opinion is nonpreential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A22-0729

Jade Joseph Nickels,
Appellant

vs.

Drew Evans, Superintendent, Bureau of Criminal
Apprehension, Respondent.

Filed July 10, 2023

Affirmed

Bjorkman, Judge

Ramsey County District Court
File No. 62-CV-21-728

Bradford Colbert, Dylan Larson (certified student attorney), Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges summary judgment dismissing his civil claims related to his predatory-offender registration requirement. Appellant contends that the

district court erred because (1) based on promissory estoppel and procedural due process, he is entitled to specific performance of the state's alleged promise that he would not be required to register, (2) respondent violated his procedural due-process rights by requiring him to register as a predatory offender, (3) the predatory-offender registration statute violates his substantive due-process rights, and (4) the predatory-offender registration statute is an unconstitutional bill of attainder. We affirm.

FACTS

Appellant Jade Joseph Nickels is required to register as a predatory offender based on an incident that occurred more than 20 years ago. In June 1998, the State of Minnesota charged Nickels with first-degree criminal sexual conduct on allegations that he injected a woman with a mixture containing cocaine and then vaginally and orally penetrated her while she was saying, "No."

The state and Nickels entered into an agreement under which Nickels pleaded guilty to an amended charge of gross-misdemeanor fifth-degree criminal sexual conduct in exchange for the state's dismissal of the first-degree criminal-sexual-conduct charge. During the August 3, 1998, plea hearing, the parties discussed the agreement:

THE PROSECUTOR: A new amended complaint has been filed with the Court. The agreement that has been reached is as follows:

Criminal Sexual Conduct in the First Degree charge would be dismissed. In exchange for that, [Nickels] would be entering pleas to the two amended counts of Controlled Substance in the Fifth Degree and Criminal Sexual Conduct

in the Fifth Degree, a gross misdemeanor. He would be sentenced concurrently on both of those. He would receive the Guideline sentence of 17 months, which would be a stay, but he is requesting that that would be executed and the one year gross misdemeanor sentence would be executed concurrently. As part of this, Your Honor, and one of the reasons for the amended complaint, it is our purpose and intent that will alleviate [Nickels] of responsibility and obligation of having to register as a sex offender.

THE COURT: [Defense counsel], is that a correct statement of the plea agreement?

DEFENSE COUNSEL: It is, Your Honor.

Nickels then entered an *Alford* plea¹ to fifth-degree criminal sexual conduct. The district court accepted Nickels's plea and imposed a 17-month prison sentence.

Upon his 1999 release from prison, Nickels learned that he was required to register as a predatory offender for ten years pursuant to Minn. Stat. § 243.166 (1998) (the registration statute). Nickels was reincarcerated several times between then and 2009; each incarceration initiated a new ten-year registration period.² Minn. Stat. § 243.166, subd. 1b(a)(iii) (2022).

In 2010, Nickels moved to withdraw his guilty plea, asserting that it was inaccurate and involuntary. The state opposed the motion, arguing that it was untimely. The

¹ An *Alford* plea permits a defendant to take advantage of a plea offer while maintaining their innocence. *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009) (citing *North Carolina v. Alford*, 400 U.S. 25, 37 (1970)), *rev. denied* (Minn. Apr. 21, 2009).

² Nickels's current registration period expires on February 26, 2030.

district court denied the motion, concluding that it was untimely and that Nickels's plea was accurate and voluntary.

In May 2019, Wadena County petitioned to terminate Nickels's parental rights to his daughter, A.A. In a supporting affidavit, a social worker described Nickels's criminal history and averred that termination was in A.A.'s best interests because of his "current probation issues, lack of chemical health treatment, lack of general stability, lack of progress on his case plan, and his current status as a predatory offender." Nickels voluntarily terminated his parental rights to A.A. But he still has parental rights as to another child.

In February 2021, Nickels commenced this action against respondent Drew Evans in his official capacity as superintendent of the Minnesota Bureau of Criminal Apprehension (BCA). He sought injunctive and declaratory relief under 42 U.S.C. § 1983 (2018), based on procedural and substantive due-process violations, promissory estoppel, and the theory that the registration statute is a bill of attainder. The BCA moved to dismiss the complaint or, in the alternative, for summary judgment. The district court granted the motion to dismiss.

Nickels appealed and asked the district court to reconsider its decision. At his request, this court stayed the appeal pending the motion for reconsideration. In a single order, the district court granted Nickels's motion for reconsideration and the BCA's motion for summary judgment. We then reinstated the appeal.

DECISION

Summary judgment is appropriate when the moving party shows that "there is no genuine issue as to any

material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. We review a grant of summary judgment de novo, viewing “the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

I. Nickels is not entitled to relief based on the alleged breach of his 1998 plea agreement.

Pointing to the prosecutor’s 1998 statement that he would not have to register as a predatory offender if he pleaded guilty to the reduced charge, Nickels contends that the “doctrine[s] of promissory estoppel and constitutional due process estop the BCA from requiring Nickels to register.” Neither of these doctrines persuade us to reverse.

A. Nickels’s promissory-estoppel claim fails as a matter of law.³

“Promissory estoppel is an equitable doctrine that implies a contract in law where none exists in fact.” *Javinsky v. Comm’r of Admin.*, 725 N.W.2d 393, 398 (Minn. App. 2007). To establish promissory estoppel, a plaintiff must prove that: (1) there was a clear and definite promise; (2) the promisor intended to induce reliance, and the promisee relied to their detriment; and (3) the promise must be enforced to prevent injustice. *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152 (Minn. 2001). Promissory estoppel “may be applied

³ The BCA argues that Nickels’s promissory-estoppel claim fails because his sole remedy is plea withdrawal. But the cases that the BCA cites do not so hold. And this court has considered the merits of a promissory-estoppel argument in a nearly identical case. *See Lange v. Evans*, No. A21-1546, 2022 WL 2438634, at *3-4 (Minn. App. July 5, 2022), *rev. denied* (Minn. Oct. 18, 2022).

against the state to the extent that justice requires.” *Meriwether Minn. Land & Timber, LLC v. State*, 818 N.W.2d 557, 564 (Minn. App. 2012) (quotation omitted), rev. denied (Minn. Sept. 25, 2012).

We recently rejected the invitation to apply promissory estoppel to bind a party other than the promisor under circumstances almost identical to this case. *Lange*, 2022 WL 2438634, at *3.⁴ Lange sued to prohibit the BCA from requiring him to register as a predatory offender, arguing that his plea of guilty to fifth-degree criminal sexual conduct was premised on the prosecutor’s promise that he would not be required to register. *Id.* We noted that no Minnesota precedent supports applying promissory-estoppel principles against an entity other than the promisor. *Id.* at *4.

Nickels contends that Lange’s reasoning is “inexplicable,” citing a case in which our supreme court collaterally estopped parties in privity with an actor. *See Willems v. Comm’r of Pub. Safety*, 333 N.W.2d 619, 621 (Minn. 1983). And Nickels argues that the Eighth Circuit applied promissory estoppel to a party in privity with the promisor in *Maitland v. Univ. of Minn.*, 43 F.3d 357 (8th Cir. 1994). Neither contention is persuasive. Willems presented the question of whether the commissioner of public safety could—in a license-reinstatement proceeding—relitigate the validity of a traffic stop previously decided in a license-revocation proceeding. *Willems*, 333 N.W.2d at 621. Resolution of the issue turned on general principles of collateral estoppel, which, by their terms, apply to both a party and those in privity

⁴ While *Lange* is a nonprecedential decision, it is highly persuasive because it is a recent case and involves nearly identical facts. Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating “nonprecedential opinions may be cited as persuasive authority”).

with a party to the prior adjudication. *Id.* And, as we pointed out in *Lange*, *Maitland* did not apply privity to a promissory-estoppel claim. *See Maitland*, 43 F.3d at 364 (reviewing the district court’s conclusion that the plaintiff’s claim was barred by “general principles of estoppel”); *Lange*, 2022 WL 2438634, at *4.

Even if privity could be invoked in the context of promissory-estoppel claims, Nickels has not established privity between the prosecutor and the BCA. Our analysis is guided by *State v. Lemmer*, in which our supreme court considered whether the state and the commissioner of public safety were in privity for collateral-estoppel purposes. 736 N.W.2d 650, 660-61 (Minn. 2007). The court looked at the commissioner’s and the state’s “functions and responsibilities,” determining the two were not in privity because the licensing and safety responsibility of the commissioner is distinct from the state’s duty to prosecute crimes. *Id.* at 661.

In *Lange*, we relied on *Lemmer* to similarly conclude that the state and the BCA were not in privity. *Lange*, 2022 WL 2438634, at *4. We analyzed their respective “functions and responsibilities” and noted that the BCA performs “such functions and duties as relate to statewide and nationwide crime information systems,” which includes the maintenance of the registered predatory-offender database. *Id.*; *see also* Minn. Stat. §§ 299C.01, subd. 4, .093 (2022). In contrast, the state and county attorneys prosecute felonies and other crimes. *See Lange*, 2022 WL 2438634, at *4; Minn. Stat. § 388.051, subd. 1(3) (2022). We see no reason to depart from *Lange*’s persuasive reasoning.

Nickels urges us to find privity between the BCA and the criminal prosecutor because doing so would not implicate separation-of-powers concerns, citing *State v.*

Mosher, No. C6-00-816, 2000 WL 1809083 (Minn. App. Dec. 12, 2000). But this would be contrary to *Lemmer's* instruction to consider the “functions and responsibilities” of the government actors. *See Lemmer*, 736 N.W.2d at 661. Moreover, the BCA has no authority regarding plea agreements, and the prosecutor had no authority to vary the terms of the registration statute when negotiating the plea agreement. Minn. Stat. § 299C.093, subd. 4; *see In re McGuire*, 756 N.W.2d 517, 519 (Minn. App. 2008) (stating that “estoppel cannot be applied when doing so would cause an agency to act outside the bounds of its authority”). On this record, Nickels’s promissory-estoppel claim fails as a matter of law.

B. Nickels does not have a due-process right to specific performance of the prosecutor’s alleged promise.

The United States and Minnesota Constitutions prohibit the state from depriving persons of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. We review whether the government has violated an individual’s due-process rights de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012).

Citing *Santobello v. New York*, 404 U.S. 257 (1971), Nickels argues that the BCA should be enjoined from requiring him to register. In *Santobello*, the Supreme Court held that “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” 404 U.S. at 262. Our supreme court has likewise concluded that permitting a prosecutor to break a promise on which a plea agreement was based violates due process. *See State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (holding that

if a criminal defendant pleaded guilty based on a promise or agreement of the prosecutor, and there is a subsequent breach of the plea agreement, the district court may “allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate”); *see also James v. State*, 699 N.W.2d 723, 728-29 (Minn. 2005).

Nickels cites no binding caselaw for the proposition that *Santobello* supports permitting a person to enforce a plea agreement in a civil action.⁵ We rejected this contention in *Lange*, explaining that the remedies of plea withdrawal and specific performance are available to criminal offenders in a postconviction action. *Lange*, 2022 WL 2438634, at *7 (citing Minn. Stat. § 590.01 (2020)). Accordingly, we held that due process does not require relief in a civil action. *Id.*

Because Nickels appropriately pursued the relief he now seeks in a postconviction proceeding, due process does not require an opportunity to obtain relief in a civil action based on promissory estoppel.

II. The registration requirements do not violate Nickels’s procedural due-process rights.

Courts make two inquiries when addressing procedural due process: (1) “is there a liberty or property

⁵ Nickels relies on many cases from other jurisdictions that discuss *Santobello* and one civil case in which the Ninth Circuit notes that

in individual cases where the state has made an explicit promise to a defendant that the defendant would be exempt from registration as a condition of his guilty plea, that promise—whether memorialized in the terms of the written plea agreement or otherwise proven—is entitled to be enforced against the State.

Am. C.L. Union of Nevada v. Masto, 670 F.3d 1046, 1061 (9th Cir. 2012). But the Ninth Circuit did not apply this concept to the facts of that case.

interest with which the state has interfered” and (2) “were the procedures used constitutionally sufficient”? *Werlich v. Schnell*, 958 N.W.2d 354, 372 (Minn. 2021) does not require an opportunity to obtain relief in a civil action based on promissory estoppel (quotation omitted). We review de novo whether the government violated an individual’s procedural due-process rights. *Sawh*, 823 N.W.2d at 632.

In cases such as this, involving interference with a person’s reputational interests, we apply the “stigma-plus” test. Under this test, a liberty interest is implicated when “a loss of reputation is coupled with the loss of some other tangible interest.” *Boutin v. LaFleur*, 591 N.W.2d 711, 718 (Minn. 1999) (citing *Paul v. Davis*, 424 U.S. 693, 710 (1976)). Boutin asserted that being required to register as a predatory offender met the “stigma-plus” test because it resulted in a loss of reputation, and it was a burden to comply with the registration statute. *Id.* The supreme court rejected Boutin’s arguments, concluding that requiring a person to update their address information poses a “minimal burden” and “is clearly not the sufficiently important interest the ‘stigma-plus’ test requires.” *Id.*

At the time the supreme court decided Boutin, the registration statute required persons to provide personal information, fingerprints, and a photograph to law enforcement; annually verify their address by mail; and notify law enforcement five days before changing their address. Minn. Stat. § 243.166, subs. 3-4 (1998). The legislature has since amended the registration statute, imposing additional requirements. Minn. Stat. § 243.166, subs. 3-4b (2022); *see also Werlich*, 958 N.W.2d at 361, 374 (noting that *Boutin* does not foreclose all constitutional challenges to the registration statute). The current statute requires registrants to provide law

enforcement with their primary and secondary addresses; the addresses of property they own, lease, or rent; all locations where they are employed and schools where they are enrolled; the year, make, model, color, and license-plate number of all the motor vehicles they own or regularly drive and the expiration date of motor-vehicle tabs for the motor vehicles they own; and all telephone numbers. Minn. Stat. § 243.166, subd. 4a(a) (2022). It also requires registrants to disclose their registration status before admission to a healthcare facility. *Id.*, subd. 4b(b).

In *Bedeau v. Evans*, we held that these additional requirements did not lead to the loss of a liberty interest under the “stigma-plus” test. 926 N.W.2d 425, 432 (Minn. App. 2019), *rev. denied* (Minn. June 26, 2019). We rejected Bedeau’s arguments that the healthcare notification requirement burdened her liberty interests and that the other additional registration requirement made it difficult to obtain housing and employment. *Id.* at 432-33. The record did not persuade us that Bedeau had been or was likely to be deprived of healthcare and demonstrated that she had, in fact, been able to obtain housing and employment. *Id.* at 433. We reasoned that the expanded registration requirements imposed “only a minimal burden on offenders.” *Id.* at 432; see also *Thibodeaux v. Evans*, 926 N.W.2d 602, 608 (Minn. App. 2019), *rev. denied* (Minn. June 26, 2019); *Lange*, 2022 WL 2438634, at *6.

Nickels asserts that the expanded requirements impermissibly burden his liberty interests in four ways. First, he contends the requirements significantly impact his ability to obtain admission to residential or inpatient treatment facilities. Nickels avers that “*some* residential treatment facilities have denied [him] admission based on [his] predatory offender status.” (Emphasis added.) But the affidavit in support of the termination of parental rights petition shows that he, in fact, gained admittance to

a treatment facility on at least one occasion. As in *Bedeau*, Nickels's actual ability to obtain inpatient treatment defeats his contention that the registration requirement burdens the kind of important interests that the "stigma-plus" test contemplates. *See Bedeau*, 926 N.W.2d at 433.

Second, Nickels argues that the registration requirements resulted, in part, in the termination of his parental rights. While a social worker identified his predatory-offender status as a factor in the assessment that Nickels was not "amenable to positive and stable parenting," it was far from the only contributing factor. Nickels ultimately agreed to terminate his parental rights to A.A. on a voluntary basis. And he still has parental rights to another child. On this record, Nickels has not demonstrated that registration burdens his right to parent.

Third, Nickels contends that the registration requirements impact his ability to find employment and housing. To support this argument, Nickels cites residency restrictions enacted by different Minnesota cities based on registration status. But he does not explain how any of these specific restrictions have affected *his* ability to obtain housing or how the additional requirements enacted since *Boutin* have affected *his* ability to find a job or housing. *See id.* (agreeing with the district court's conclusion that the plaintiff "failed to provide sufficient evidence to suggest that the registration requirement was the primary cause of her difficulties, rather than her recent conviction and prison incarceration").

Finally, Nickels asserts that he has a liberty interest in being free from the threat of prosecution, and the registration requirements expose him to such a threat in the event that he violates one of the terms. But this

possibility existed at the time of *Boutin*, and the supreme court nonetheless held that the registration statute was constitutionally valid. *See* Minn. Stat. § 243.166, subd. 5 (1998) (outlining the criminal penalties for failure to register and follow registration requirements).

In sum, Nickels has not presented evidence that the current version of the registration statute led to his loss of any tangible interest and is more than “a minimal burden.” *See* Bedeau, 926 N.W.2d at 432. The registration statute does not violate Nickels’s right to procedural due process. *See* Sawh, 823 N.W.2d at 632 (“If the government’s action does not deprive an individual of [a protected] interest, then no process is due.”).

III. The predatory-offender registration requirement does not violate Nickels’s substantive due-process rights.

Substantive due process protects against “certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.” *State v. Hill*, 871 N.W.2d 900, 906 (Minn. 2015). When considering a substantive due-process challenge to a statute, we first determine whether the law implicates a fundamental right. *Boutin*, 591 N.W.2d at 716. If it does, the state must establish “a legitimate and compelling interest for abridging that right.” *Id.* If it does not, we consider whether the law has a rational basis. *Id.* We review *de novo* whether the government violated Nickels’s substantive due-process rights. *Sawh*, 823 N.W.2d at 632.

Nickels argues that the registration statute violates his fundamental right to parent because the state terminated his parental rights, in part, because he must register as a predatory offender. *See SooHoo v. Johnson*, 731 N.W.2d 815, 820 (Minn. 2007) (stating “[a] parent’s

right to make decisions concerning the care, custody, and control of his or her children is a protected fundamental right”). The BCA contends that “Nickels cannot show that his registration status interfered with his right to parent” because his status as a predatory offender was only a small part of the termination case. We agree with the BCA. Nickels’s predatory-registration status was only one of many reasons stated for recommending termination; the other reasons were his “extensive criminal history,” failure to comply with an out-of-home placement plan, lack of chemical-health treatment, and lack of general stability. Nickels voluntarily terminated his parental rights to A.A., and the termination proceeding did not affect his right to parent his other child. Thus, the registration statute did not implicate Nickels’s fundamental right to parent.⁶

Because the registration statute does not implicate a fundamental right, we consider whether it “provide[s] a reasonable means to a permissible objective” or whether it is “arbitrary or capricious.” *Boutin*, 591 N.W.2d at 716. Although Nickels does not address the rational-basis test, he challenges the “fundamental premise underlying the [registration] statute” in connection with his argument that the law does not serve a compelling interest. This contention is unavailing. The supreme court held in

⁶ Nickels asserts that in *Werlich*, the supreme court “held that the registration statute affected a person’s fundamental right to parent.” We disagree. The issue in *Werlich* was whether a mandatory investigation for threatened sexual abuse affected his fundamental right to parent his child. *Werlich*, 958 N.W.2d at 371. The court held that *Werlich* *sufficiently alleged* facts to “establish that the investigation mandated as a result of his registration status” affected his fundamental right to parent by disturbing the presumption that he is a fit parent, but remanded for the commissioner to show that the statute requiring an investigation advances a compelling government interest and is narrowly tailored to serve that interest. *Id.*

Boutin that the registration statute did not violate the constitutional right to substantive due process because “the “primary purpose of the [registration] statute is to create an offender registry to assist law enforcement with investigations” and “[k]eeping a list of such offenders is rationally related to the legitimate state interest of solving crimes.” *Id.* at 717-18. Accordingly, the registration statute does not violate Nickels’s substantive due-process rights.

IV. The registration statute is not a bill of attainder.

The United States and Minnesota Constitutions prohibit bills of attainder. U.S. Const. art. I, § 9, cl. 3; Minn. Const. art. I, § 11. A bill of attainder is a law that “specifically singles out an identifiable group or individual for the infliction of punishment by other than judicial authority.” *Rsrv. Mining Co. v. State*, 310 N.W.2d 487, 490 (Minn. 1981). The prohibition against bills of attainder is grounded in separation-of-powers concerns. *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 469 (1977).

Nickels contends that the registration statute is a bill of attainder because being required to register is punishment. To determine whether the registration statute has a punitive purpose, we assess: “(1) whether the law imposes punishment such as death, imprisonment, banishment, confiscation of property, or barring participation in certain employment or occupations; (2) whether the law furthers a non-punitive legislative purpose; and (3) whether the legislative body had a punitive motive in passing the law.” *Council of Indep. Tobacco Mfrs. of Am. v. State*, 685 N.W.2d 467, 474-75 (Minn. App. 2004), *aff’d*, 713 N.W.2d 300 (Minn. 2006).

The supreme court answered this question in *Boutin*, holding that the registration statute is regulatory, and not punitive. *See Boutin*, 591 N.W.2d at 717 (concluding Minn.

Stat. § 243.166 is a “civil, regulatory statute” because it “does not promote the traditional aims of punishment”). We recently relied on *Boutin* in *Nguyen v. Evans*, holding that the registration statute is not a bill of attainder because it is civil regulatory rather than punitive. No. A21-1319, 2022 WL 1210277, at *9 (Minn. App. Apr. 25, 2022), *rev. denied* (Minn. July 19, 2022).⁷ We noted that the registration statute does not impose a punishment such as imprisonment, banishment, or confiscation of property, and the fact that the registration requirement may make it more difficult to obtain employment does not make the registration statute punitive. *Nguyen*, 2022 WL 1210277, at *9; *see also Werlich*, 958 N.W.2d at 369 (concluding that a defendant’s ineligibility for the Challenge Incarceration Program due to his status as a predatory offender was not punitive). The registration statute furthers the non-punitive legislative purpose of assisting law enforcement with investigations. *See Boutin*, 591 N.W.2d at 717 (stating “the primary purpose of the [registration] statute is to create an offender registry to assist law enforcement with investigations”).

Nickels urges us to depart from *Nguyen* because it is “simply not true” that the registration statute assists law enforcement with investigations because in the past the authorities discovered his wrongdoing during a “routine check[] of registered sex offenders.” We are not convinced to do so. The fact that the registration statute did not assist law enforcement in investigating Nickels on one occasion does not alter its primary purpose. It is not designed to and does not impose punishment. It is not an unconstitutional bill of attainder.

⁷ *Nguyen* is persuasive because it is a recent case and involves similar facts. *See* Minn. R. Civ. App. P. 136.01(c).

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In sum, the district court did not err by granting summary judgment dismissing this action.

Affirmed.

APPENDIX B

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL
DISTRICT

Jade Joseph Nickels,

Case No. 62-CV-21-728

Plaintiff,

ORDER

v.

Drew Evans, Superintendent, Bureau of Criminal
Apprehension,

Defendant.

The above-entitled matter came on for a hearing before the undersigned on August 16, 2022, pursuant to Plaintiff's Motion for Reconsideration of the Court's Order Granting Defendant's Motion to Dismiss. Brad Colbert, Attorney at Law, and Julia Durst, certified student attorney, appeared on behalf of the Plaintiff. Angela Kiese, Attorney at Law, appeared on behalf of the Defendant. All appearances weremade remotely via Zoom.


Based on all the files, pleadings, records, and proceedings herein, and on the arguments and submissions of the parties, the court makes the following:

ORDER

1. Plaintiff's motion for reconsideration is granted.
2. Defendant's motion is converted to a Motion for Summary Judgment and is granted.
3. Plaintiff's motion for summary judgment is denied.
4. The attached Memorandum is incorporated herein as part of this order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:



Dated: November 15, 2022

Grewing, Sara (Judge)
Nov 16 2022 11:28 AM

The Honorable Sara R. Grewing
Judge of District Court

MEMORANDUM

FACTUAL BACKGROUND

Plaintiff, Jade Nickels, has brought a § 1983 action against Defendant, Drew Evans, the Superintendent of the Minnesota Bureau of Criminal Apprehension (“Defendant” or “Superintendent Evans”), in his official capacity. Plaintiff has alleged various violations of procedural and substantive due process, promissory estoppel, and asserts that the predatory offender registration statute is a bill of attainder. Defendant denies these allegations.

Statement of Undisputed Facts

In 1998, Plaintiff was charged with one count of Possession of Schedule 1, 2, 3, 4 – Not Small Amount of Marijuana in the Fifth Degree and one count of Criminal

Sexual Conduct in the First Degree. Both charges arose from an incident where Plaintiff and another individual sexually assaulted the female victim. Compl. ¶ 5; Def. Ex. 1. On August 3, 1998, pursuant to a plea agreement offered by the State, Plaintiff pled guilty to Criminal Sexual Conduct in the Fifth Degree and Possession of a Controlled Substance in the Fifth Degree. Compl. ¶ 6; Def. Mem. Exs. 3, 4-1, 4-3, 4-4, 4-6, 4-7, 5. The plea petition itself did not discuss predatory offender registration. Def. Mem. Exs. 4-3, 4-4. Plaintiff also entered an Alford plea to both amended counts. Compl. ¶ 7. During the August 3rd hearing, Mr. Nickels' attorney stated that one of the reasons the plea agreement was reached was to alleviate Mr. Nickels from having to register as a sex offender. Def. Mem. Exs. 5-2, 5-3, 5-9. The adjudicating court sentenced Mr. Nickels and convicted him of the offenses as outlined in the plea agreement. Compl. ¶ 7. Mr. Nickels was sentenced to an executed seventeen-month sentence. Compl. ¶ 7. Neither the court nor the parties discussed registration any further at the time of sentencing.

In May 1999, Mr. Nickels first registered as a predatory offender in connection with the 1998 offenses. Def. Mem. Ex. 6-1. At some point between 2000 and 2002, Mr. Nickels failed to register. The Anoka County Attorney's Office declined to prosecute Mr. Nickels' failure to register after reviewing the Crow Wing County court records. Def. Mem. Exs. 7-4, 7-5.

Plaintiff moved to Seattle, Washington at some point between January and May 2002. When the Minnesota Bureau of Criminal Apprehension ("BCA") learned of this, the BCA attempted to get him into compliance with the registration statute. Registration forms were sent to Plaintiff's Washington state address. Def. Mem. Exs. 8-1-8-8. Plaintiff returned to Minnesota at some time between 2002 and 2003. The BCA learned of his return when

Plaintiff was arrested in Crow Wing County on controlled substance and property crimes charges. Def. Mem. Exs. 8-12, 9-1–9-4. Plaintiff was arrested again in August 2003 in Forest Lake, Minnesota. After his second arrest, the BCA again attempted to get Plaintiff into compliance with the registration statute. Def. Mem. Exs. 9-5, 9-6. Address verification forms were filed for the years 2003 and 2004. Def. Mem. Exs. 9-7–9-16, 41-4.

Between 2004 and 2020, Mr. Nickels was in and out of incarceration. As a result of his incarceration, Plaintiff intermittently complied with the obligation to register and send updated address verification forms. Mr. Nickels' most recent release from incarceration was in February 2020.¹

Procedural History

Plaintiff commenced this action against Defendant on February 12, 2021, alleging that the registration requirement has caused him undue hardship in accessing state-provided housing, stable employment, and reintegration into the community. Compl. ¶ 10. Specifically, Plaintiff alleges violations of his constitutional right to due process, asserts that the BCA should be required to enforce its promise that Plaintiff should not register as a predatory offender, and asserts that Minn. Stat. 243.166 is an unlawful bill of attainder. *Id.* ¶¶ 11–22. Plaintiff requests injunctive relief from this Court.

Defendant brought Motions to Dismiss and for Summary Judgment on November 17, 2021. Plaintiff filed their Motion for Summary Judgment on November 18, 2021. The Court held a hearing on both Motions and

¹ Mr. Nickels' most recent release from incarceration stems from an arrest on an unrelated controlled substance matter.

granted Defendant's Motion to Dismiss and for Summary Judgment on March 29, 2022.

STANDARDS OF REVIEW

I. Motion for Reconsideration

"Motions for reconsideration play a very limited role in civil practice, and should be approached cautiously and used sparingly." Minn. R. Gen. Prac. 115.11 cmt. The district court is likely to exercise its discretion to reconsider a prior ruling "only where intervening legal developments have occurred...or where the earlier decision is palpably wrong in some respect." *Id.* In his request for reconsideration, Plaintiff raises both procedural defects in the Court's order as well as an outstanding factual dispute. In light of the possibility that the Court's conclusions were palpably wrong, this Court determines that reconsideration is appropriate.

II. The Court Erred in Granting Defendant's Motion to Dismiss

In considering a motion to dismiss pursuant to Minn. R. Civ. P. 12.02(e), this Court may not consider materials outside of the pleadings, and all assumptions made from the pleadings must favor the non-moving party. *N. States Power Co. v. Franklin*, 265 Minn. 391, 395-96, 122 N.W.2d 26, 29-30 (1963). In reaching its conclusion, this Court referenced several documents outside of Plaintiff's complaint, and thus dismissal of the matter under Rule 12 was palpably wrong under Rule 115.11. The Court regrets any confusion this error may have caused.

III. Defendant's Summary Judgment Motion is Granted

Summary judgment is appropriate when the record, taken as a whole, shows that "there is no genuine issue as

to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.01. “A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03). Summary judgment is improper when reasonable minds could differ and draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

Minnesota case law has long held that when considering a motion for summary judgment, “the district court must view the evidence in the light most favorable to the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 72 (Minn. 1997). The party opposing summary judgment cannot rely on conclusory allegations in the pleadings for support, but must present specific facts that demonstrate “genuine issues of material fact” for trial. *W.J.L. v. Bugge*, 573 N.W.2d 677, 680 (Minn. 1998). Further, when determining whether a genuine issue of material fact for trial exists, the court is “not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons could not draw different conclusions from the evidence presented.” *DLH*, 566 N.W.2d at 70.

LEGAL ANALYSIS

I. Statute of Limitations

Defendant contends that Mr. Nickels’ claims are barred by the statute of limitations and he is entitled to summary judgment on that ground alone. Defendant argues that any alleged harm accrued by May 1999, when Mr. Nickels first registered as a predatory offender, and

that Mr. Nickels had six years from May 1999 to bring his claims before this Court. Plaintiff maintains that Mr. Nickels' claims are not barred by the statute of limitations. Plaintiff argues that even if Mr. Nickels' claims were brought after the limitations period ended, Mr. Nickels has been subjected to a continuing violation that essentially restarts the limitations period each time he has been injured by the violation.

The issue here is whether Mr. Nickels' claims result from a continuing violation or if it is a discrete, one-time act that accrued in May 1999. If it is a continuing violation, Plaintiff's claims would not be time-barred, and the instant lawsuit must proceed. However, if Plaintiff's claims accrued in May 1999 when Mr. Nickels first registered, his claims would be time-barred, and his suit must be dismissed.

Statute of Limitations

Under Minnesota law, the statute of limitations commences once a cause of action has accrued. Minn. Stat. § 541.01 (2020).² *See also Hamann*, 808 N.W.2d at 832. A cause of action accrues when “it could be brought in a court of law without dismissal for failure to state a claim.” *Bonhiver v. Graff*, 311 Minn. 111, 117, 248 N.W.2d 291, 296 (1976) (citation omitted). *See also Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 496 (Minn. 2018). A claim accrues when there exist sufficient operative facts to support each element of a claim. *Id.*; *Hamann*, 808 N.W.2d at 832. In this case, the

² “Actions can only be commenced within the periods prescribed in this chapter, after the cause of action accrues...”

applicable statute of limitations for each of Plaintiff's claims is six years. Minn. Stat. § 541.05, subd. 1(5).³

Generally, there are no exceptions to the statute of limitations and courts are not empowered to make exceptions to such statutes. *State v. Bies*, 258 Minn. 139, 145, 103 N.W.2d 228, 234 (1960). One exception that exists to the statute of limitations is the continuing violation doctrine. This doctrine provides that a cause of action does not lapse if the alleged wrongful act was a continuing violation. *Sigurdson v. Isanti Cnty*, 448 N.W.2d 62, 66 (Minn. 1989). The premise of the continuing violations doctrine is that a continuous practice “over a period of time [can] indicate a systematic repetition of the same policy and constitute a sufficiently integrated pattern to form, in effect, a single ... act.” *Hubbard v. United Press Int', Inc.*, 330 N.W.2d 428, 440 n.11 (Minn. 1983). When applying the continuing violations doctrine, courts must focus on whether a present violation exists. See *Sigurdson*, 448 N.W.2d at 67. “So long as the violation

³ Congress did not include a statute of limitations for claims brought under 42 U.S.C. § 1983. When federal statutes do not contain their own limitations periods, courts apply the most appropriate or analogous statute of limitations from the forum state. *Wilson v. Garcia*, 471 U.S. 261, 266–68 (1985); *Egerdahl v. Hibbing Comm. College*, 72 F.3d 615, 617 (8th Cir. 1995). In *Wilson*, “the [United States] Supreme Court held that § 1983 claims are best characterized as personal injury actions for statute of limitations purposes.” *Cook v. City of Minneapolis*, 617 F. Supp. 461, 463 (D. Minn. 1985). See also *Owens v. Okure*, 488 U.S. 235, 240–41 (1989) (“a State’s personal injury state of limitations should be applied to all § 1983 claims”). Courts in Minnesota have held that § 1983 claims are governed by the six-year limitations period for personal injury claims. *Helleloid v. Indep. Sch. Dist. No. 361*, 149 F. Supp. 2d 863 (D. Minn. 2001); *Berg v. Groshen*, 437 N.W.2d 75, 77 (Minn. App. 1989) (holding that the six-year statute of limitations applies to § 1983 claims). Since § 1983 claims are construed by the courts as personal injury actions, Minn. Stat. § 541.05, subd. 1 applies here.

continues into the limitations period, the statute of limitations does not bar the claim.” *Lewis v. Hutchinson*, 929 N.W.2d 444, 450 (Minn. App. 2019).

Minnesota’s Predatory Offender Registration Statute

Minnesota law requires certain offenders who are charged with criminal sexual conduct to register even if they are convicted of another offense “arising out of the same set of circumstances.” Minn. Stat. § 243.166, subd. 1b(a)(1)(iii) (2020). Registrants are required to “continue to register” for ten years after they initially register. *Id.* subd. 6(a). Failure to comply with registration is a felony. *Id.* subd. 5(a). Furthermore, a failure to comply with registration results in an additional five-year period where the registrant must continue to register. *Id.* subd. 6(b). The statute also provides that a registrant who is “incarcerated due to a new conviction for a new offense or following a revocation of probation, supervised release, or conditional release for any offense” must continue to register for an additional ten years from when the person was last released or the supervision period expires. *Id.* subd. 6(c).

Application to Mr. Nickels’ Claims

Mr. Nickels, after pleading guilty to an amended count of criminal sexual conduct, was first notified of the registration requirement in May 1999, after which he began to register. Mr. Nickels has mostly complied with the registration requirement from when he first registered until now. Between 1999 and 2021, Mr. Nickels has been incarcerated on new convictions, with the most recent incarceration occurring in February 2020. As a result of his incarcerations on new convictions unrelated to the original criminal sexual conduct conviction, Mr. Nickels must register as a predatory offender for an additional ten years. Def. Ex. 40-1, 40-2, 40-3, 42. *See also*

Minn. Stat. § 243.166, subd. 6(c). Currently, Mr. Nickels' current registration end date is February 26, 2030, which is ten years from the date he was last released from incarceration in February 2020. *Id.* Ex. 42 ¶ 4.

Plaintiff argues that although Mr. Nickels was originally required to register in May 1999, the continuing violation doctrine applies, and the statute of limitations was tolled because of the BCA recent determination that Mr. Nickels must continue to register as a predatory offender for ten more years after his most recent incarceration in February 2020. Furthermore, Plaintiff contends that Mr. Nickels experiences an injury each time he is required to complete address verification forms, or provide notice of address changes, employment changes, or vehicle changes. Plaintiff points the Court to an order issued in a similar case. *See Drobec v. Drew Evans, Superintendent of the Minnesota Bureau of Criminal Apprehension*, No. 62-CV-18-3944, *1 (Minn. Dist. Ct. Dec. 5, 2019).

In *Drobec*, a jury found the plaintiff, Darcy Drobec, guilty of one count of second-degree intentional murder, one count of second-degree felony murder, and one count of kidnapping. *Id.* at *1. Ms. Drobec was adjudicated guilty of all three counts and was sentenced to serve a total of 550 months. *Id.* *2. When Ms. Drobec committed the offense and was convicted, neither of the crimes for which Drobec was charged or convicted were registrable offenses under the Minnesota predatory offender registration law, nor did they arise out of the same set of circumstances as a registrable offense. *Id.* As a result, the requirement to register as a predatory offender was not addressed at any point prior to, during, or after trial.

In 1999, the Minnesota legislature amended the predatory registration laws, making it so that all charges

arising from kidnapping offenses became registrable. *Id.* In 2004 while Drobec was incarcerated, ten years after being sentenced, she was informed that she was required to register as a predatory offender. *Id.* Ms. Drobec had to complete the registration and notice forms and submit them to the BCA. *Id.* Ms. Drobec was not afforded a hearing before being required to register. *Id.* The *Drobec* Court found that each time Ms. Drobec was required to register was a separate actionable wrong, resulting in a new six-year period each time she registered. *Id.* *8 –*9. As a result, the *Drobec* Court concluded that Ms. Drobec’s continuing obligation to register was a continuing violation, and that her lawsuit did not exceed the statute of limitations. *Id.* *7 –*8.

Defendant argues that the continuing violation doctrine is not applicable here and that the injury culminated when Mr. Nickels was first required to register in May 1999. Defendant points the Court to an unpublished case, *Jones v. Evans*, as instructive on the issue of continuing violation.⁴ In *Jones*, the plaintiff was charged with third-degree criminal sexual conduct in 2005. 2018 WL 3716094, A18-0139 *1, *1 (Minn. App. 2018). In 2005, Mr. Jones plead guilty to, and was adjudicated guilty of, an amended charge of fifth-degree criminal sexual conduct. *Id.* Mr. Jones was first informed of needing to register in 2006, after which he did register. *Id.* Mr. Jones twice failed to comply with the registration

⁴ While unpublished opinions of the court of appeals are not precedential, district courts may consider unpublished court of appeals decisions for their persuasive and instructive value. *Adams v. Harpstead*, 947 N.W.2d 838, 846 (Minn. App. 2020). See also *White Bear Lake Restoration Assoc., ex rel. State v. Minn. Dept. of Nat. Res.*, 928 N.W.2d 351 (Minn. App. 2019), *aff’d in part, rev’d in part*, 946 N.W.2d 373 (Minn. 2020); *Kruse v. Comm’r of Pub. Safety*, 906 N.W.2d 554 (Minn. App. 2018).

requirement and was duly convicted of his failure to comply with registering under the predatory offender registration statute. *Id.*

Mr. Jones sued the BCA Superintendent in 2016, bringing claims for violation of his substantive and procedural due process rights, and promissory estoppel. *Id.* at *3. Mr. Jones alleged that the BCA wrongfully required him to register, arguing that his 2005 plea agreement contemplated that he would not have to register as a predatory offender. *Id.* The Court of Appeals upheld the District Court's decision to dismiss his claims as the applicable six-years limitations period had expired. *Id.* at *3. Furthermore, the Court of Appeals noted that the continuing violation theory did not apply to Mr. Jones' claims because Mr. Jones was challenging the initial determination that he must register. As such, Mr. Jones' claims were based upon a discrete act by the BCA. Any additional and ongoing reporting requirements that Mr. Jones was subject to were merely a consequence of the BCA's initial determination, not a new cause of action.

While the Court finds the *Jones* opinion persuasive and instructive, the Court is hesitant to find that all of Mr. Nickels' claims must be dismissed because the limitations period expired. The Court is persuaded by Plaintiff's arguments that Mr. Nickels new ten-year registration period constitutes a continuing violation. Here, Plaintiff was first required to register in May 1999. Between 1999 and 2020, Mr. Nickels has largely complied with the registration requirements. Within that same timeframe, Mr. Nickels has been incarcerated several times, with his most recent incarceration being in February 2020, which triggered a new ten-year registration period. Plaintiff commenced his lawsuit in February 2021, twenty-two years after the BCA first required that he register as a

predatory offender and one-year after his most recent incarceration.

While this is a close call for the Court, the Court does find that Mr. Nickels has been subjected to a continuing violation when he was made to register for ten more years after his 2020 incarceration on an unrelated conviction. The Court finds that a new six-year limitations period is triggered, and that Mr. Nickels' claims are not time-barred.

II. Summary Judgment Motion

Plaintiff's Statutory Requirement to Register as a Predatory Offender

As previously stated, Minn. Stat. § 243.166 requires certain individuals to register as predatory offenders. The statute provides for how long registrants are required to continue to register as well as what happens when a registrant fails to comply or is incarcerated on a new conviction for a new offense. *Id.* The statute provides that when a person is required to register, the sentencing court must tell the person of the duty to register, require the person to complete a registration form, and forward that form, along with the complaint and sentencing documents, to the BCA. *Id.* The court may not modify an offender's statutory obligation to register as a predatory offender in the pronounced sentence. *Id.* If, as happened here, the court does not notify a person of the registration requirement at the time of sentencing, the person's assigned corrections agent or law enforcement officer is required to notify the person of the registration obligation. *Id.*

Here, Mr. Nickels was initially charged with one count of first-degree criminal sexual conduct. He later pled guilty to, and was convicted of, fifth-degree criminal

sexual conduct. While not an enumerated offense that would require registration, that fifth-degree criminal sexual conduct arose from the same set of circumstances that led to the first-degree charge, specifically, Plaintiff's sexual assault of a female in a motel room in 1998. Between 1999 and 2021, Mr. Nickels has been incarcerated on new convictions.

The issue of “arising out of the same set of circumstances” has been previously addressed by the Minnesota Supreme Court in *Boutin v. LaFleur*, where the Court held that a person was required to register as a predatory offender when convicted of an offense that arose from the same set of circumstances as one of the enumerated registration offenses. 591 N.W.2d 711 (Minn. 1999). The *Boutin* Court held that: “Once an offender is charged with and convicted of a crime that satisfies these elements, the offender must be notified of his duty to register.” *Id.* at 714–15. This principle has been consistently applied by the courts since *Boutin* and affirmed by the Minnesota Court of Appeals as recently as July of this year. *See Lange v. Evans*, No. A21-1546, 2022 WL 2438634, at *3 (Minn. App. July 5, 2022) (“mere dismissal of a charge alleging an offense that requires registration does not compel the conclusion that the charge was not supported by probable cause.”).

There is no dispute that there was probable cause to support the original charge of first degree criminal sexual conduct. The fact that Mr. Nickels pled guilty to a lesser charge does not extinguish probable cause for the original charge. Given this, Plaintiff was properly required to register as a predatory offender. Plaintiff was charged with first-degree criminal sexual conduct and was convicted of an offense that arose from the same set of circumstances. Defendant properly required Plaintiff to register as a predatory offender, and to have Plaintiff

continue to register pursuant to Minn. Stat. 243.166. Therefore, Plaintiff is not entitled to declaratory or injunctive relief relieving him of his registration obligations.

Violations of Procedural Due Process

Plaintiff alleges that Defendant violated his constitutional right to procedural due process under both the United States and Minnesota Constitutions by requiring him to register as a predatory offender. U.S. Const. amend. XIV, § 1; Minn. Const. art. 1, § 7. “When procedural due process is at issue, we must first determine whether a protectable liberty interest is at stake.” *Boutin*, 591 N.W.2d at 718. Minnesota has adopted the “stigma-plus” test, which holds that “a liberty interest is implicated when a loss of reputation is coupled with the loss of some other tangible interest.” *Id.* (citing *Paul v. Davis*, 424 U.S. 693, 701–02, 96 S. Ct. 1155, 1160–61, 47 L. Ed. 2d 405 (1976)).

The Minnesota Supreme Court has held that Minn. Stat. § 243.166 did not violate procedural or substantive due process. *Boutin*, 519 N.W.2d at 716–20. Regarding procedural due process, the *Boutin* Court explained that requiring a person to register as a predatory offender did not meet the “stigma-plus” test. *Id.* at 718. “In *Boutin*, the [S]upreme [C]ourt held that although being labeled a predatory offender is injurious to one’s reputation, that injury must still be coupled with the loss of some other recognizable interest.” *Bedeau v. Evans*, 926 N.W.2d 425, 431–32 (Minn. App. 2019) (citing *Boutin*, 591 N.W.2d at 718). The *Boutin* Court further maintained that complying with the requirements of the registration

statute was a minimal burden and was not a sufficiently important interest the “stigma-plus” test requires. *Id.*⁵

Since the predatory offender registration statute was enacted, additional requirements have been added by the Legislature. The changes include new procedures for individuals with no primary address or who are working outside of the jurisdiction in which one is registered, as well as procedures for recording real property, employment, vehicles, and health care facility notification.

Plaintiff has filed an affidavit attesting to the difficulties he has encountered with the registration requirement. Specifically, Plaintiff notes that having to register makes it difficult for him to find a job and housing. *Aff. of Jade Joseph Nickels*, ¶ 9 (hereinafter “Nickels Aff.”). He also points out that he has struggled with substance abuse and his having to register interferes with his ability to gain placement at residential treatment facilities due to his offender status. *Id.* Plaintiff also attests that his offender status has impacted his personal life. He voluntarily agreed to terminate his parental rights to his daughter. *Id.* ¶ 10. He has been accosted based on his status as a predatory offender, causing him mental anguish, and his status has prevented his significant others from having their children around him. *Id.* ¶¶ 10 – 12.

While the Court sympathizes with Mr. Nickels and the difficulties he has had to face, the Court is not fully persuaded that he has been or is likely to be deprived of any recognizable interest. The appellate court has held that the additional reporting requirements are a minimal burden imposed on offenders. *See Bedeau*, 926 N.W.2d at

⁵ The Court of Appeals also noted that “there is no recognizable interest in being free from having to update address information.” *Id.*

432. In *Bedeau*, the appellate court concluded that the additional requirements are similar to the updating address information, which the Supreme Court had previously determined was a minimal burden and not a sufficiently important interest as required by the stigma-plus test. *Id.* Plaintiff contends that he has had difficulty finding housing and employment as a result of his registration as a predatory offender. Again, while the Court deeply sympathizes with Mr. Nickels, it cannot find sufficient evidence to suggest that the registration requirement is the primary cause of his difficulties rather than his convictions and most recent incarceration.

In addition, Plaintiff argues that when he accepted the plea agreement, and was convicted of fifth-degree criminal sexual conduct, it was understood by everyone that he would not have to register as a predatory offender. The sentencing transcript shows two specific points where registration was briefly discussed. First, Mr. Nickels attorney acknowledged that one of the reasons for entering into the plea agreement was to alleviate Mr. Nickels of his obligation to register as a predatory offender. Pln. Ex. 1, Sentencing Tr. at 2, 2–7. The second instance was during the inquiry of Mr. Nickels. Mr. Nickels’ attorney asked Mr. Nickels if he understood that the plea was being entered into so that he would not have to register as an offender. *Id.* at 9, 21–23. Mr. Nickels replied that he understood. *Id.* at 9, 24. Outside of those two instances, the fact that Mr. Nickels would not have to register was not addressed at any other point during sentencing. The prosecutor did not address that Mr. Nickels would not have to register as an offender.⁶ The

⁶ At the beginning of the sentencing hearing, Mr. Nickels attorney recited the essence of the plea agreement, which is where it was first mentioned that the agreement was being entered so that Mr. Nickels

sentencing court did not acknowledge or specifically pronounce that Mr. Nickels would not have to register as a predatory offender or address registration in any way. In short, the BCA was not present at Plaintiff's sentencing hearing, nor were any representations made to the Court that some unique circumstance made the statute inapplicable to Plaintiff's circumstances. For the purposes of this Motion, Plaintiff offers his testimony under penalty of perjury that the prosecutor told him that the plea agreement meant he did not have to register. Nickels Aff. at ¶ 6. ("The prosecutor promised that, if I pled guilty, I would not have to register as a sex/predatory offender."). Even if the prosecutor eventually testified to the credibility of Plaintiff's statements in this matter, the Court could find no case law that suggests it would have any legal consequence. *See also infra* regarding privity.

Plaintiff was first informed of his registration requirement in 1999, when the BCA contacted him to get him to register. If Plaintiff was promised that he would not have to register if he pled guilty, or was misinformed or misunderstood the plea agreement, his remedy was to seek withdrawal of the guilty plea. Plaintiff sought the withdrawal of the plea, which the Crow Wing County court denied. As such, Plaintiff cannot establish that there has been a violation of procedural due process here.

Violations of Substantive Due Process

Plaintiff also alleges that Defendant denied him his constitutional right to substantive due process. *See* U.S. Const. amend. XIV, § 1; Minn. Const. art. 1, § 7. Substantive due process requires plaintiffs to show that

would not have to register. The sentencing court asked the prosecutor if that was a fair recitation of the facts. The prosecution agreed. *See* Pln. Ex. 1, Sentencing Tr. at 2.

there was a government action that deprived them of a fundamental right and that a government official acted in a manner that shocked the conscience. In *Boutin*, the Minnesota Supreme Court held that the registration statute did not implicate a fundamental right and that the statute was rationally related to the legitimate state interest of solving crimes. *Boutin*, 591 N.W.2d at 716-20. Similarly, the Eighth Circuit also held in *Gunderson v. Hvass* that Minnesota's registration statute is non-punitive and rationally related to a legitimate government purpose. 339 F.3d 639 (8th Cir. 2003).

Plaintiff cannot establish a violation of substantive due process here. Plaintiff argues that the registration requirement has interfered with his fundamental right to parent his child. Specifically, Plaintiff argues that a county human services agency could petition to terminate his rights at any point. Plaintiff asserts that in 2019 a petition was brought to terminate his parental rights to his daughter. Mr. Nickels ultimately voluntarily chose to terminate his parental rights. Since Mr. Nickels has voluntarily terminated his parental rights, Mr. Nickels has neither shown a fundamental right at stake nor any governmental action that shocks the conscience. Mr. Nickels substantive due process violation claim is dismissed.

Promissory Estoppel

Promissory estoppel is an equitable doctrine that implies a contract in law where none exists in fact. *Martens v. Minn. Min. & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). To establish a claim for promissory estoppel, there must be: (1) a clear and definite promise; (2) the promisor intended to induce reliance and the promisee relied on the promise to his detriment; and (3) the promise must be enforced to prevent injustice. *Id.* Plaintiff asserts

that the BCA promised to Mr. Nickels that if he pled guilty to an amended charge of criminal sexual conduct, he would not have to register as a predatory offender. Mr. Nickels relied on that promise when he entered into the plea agreement and is now seeking enforcement of that promise to prevent injustice to himself.

Defendant argues that the BCA did not make a promise to Mr. Nickels. First, Defendant points to the fact that the BCA is not in privity with the prosecutor who made the charging decision. Second, even if there was privity, there was no clear and definite promise from the prosecutor. The Court agrees with Defendant that the BCA itself did not make a promise to Mr. Nickels. Furthermore, the Court has struggled to find where in the sentencing transcript, the prosecutor made a clear, definite statement that it promised to Mr. Nickels that he would not have to register as an offender. Specifically, the sentencing transcript does not contain any discussion from the prosecutor, or between defense counsel and the prosecutor, as to the alleged promise to not have Mr. Nickels register as a predatory offender. Instead, only defense counsel addressed the alleged reasoning behind the plea agreement. Moreover, as the Court of Appeals very recently noted in *Lange*, the functions and responsibilities of the BCA are distinct from that of the state and a county attorney's office. The BCA, which is a division of DPS, performs “such functions and duties as relate to statewide and nationwide crime information systems,” including the maintenance of the registered predatory offender database. Minn. Stat. § 299C.01.093 (2020). County attorneys and their assistants, in contrast, prosecute felonies and other crimes. Minn. Stat. § 388.051, subd. 1(3) (2020). *Lange v. Evans*, No. A21-1546, 2022 WL 2438634, at *4 (Minn. App. July 5, 2022). As such,

Plaintiff's claim for promissory estoppel fails and should be dismissed.

Bill of Attainder

Plaintiff brings a claim that Minn. Stat. § 243.166 constitutes an unconstitutional bill of attainder. Under both the United States and Minnesota Constitutions, no bill of attainder shall be passed. U.S. Const. art. I, § 9, cl. 3; Minn. Const. art. 1, § 11. A bill of attainder is defined as "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." *Council of Indep. Tobacco Mfrs. Of America v. State*, 685 N.W.2d 467, 474 (Minn. App. 2004). *See also Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 468 (1984). To support a claim that a statute is a bill of attainder, Plaintiff must show that the statute singles out an identifiable individual or group and punishes them without a judicial trial. *Council of Indep. Tobacco Mfrs. of America*, 685 N.W.2d at 474.

Minnesota courts have determined that registration as a sex offender does not advance the traditional aims of punishment and is therefore not punitive. *See State v. Manning*, 532 N.W.2d 244, 248 (Minn. App. 1995). *See also State v. Larson*, No. A05-40, 2016 WL 618857, *4 (Minn. App. Mar. 14, 2006). Minnesota's predatory offender registration statute is not an unconstitutional bill of attainder.

CONCLUSION

For the reasons discussed above, Plaintiff's Motion for Reconsideration is granted, and Defendant's alternative motions are condensed into one motion for summary judgment. Defendant's motion is granted, and judgment entered as a matter of law.

APPENDIX C

**STATE OF MINNESOTA
COUNTY OF RAMSEY**

**DISTRICT COURT
SECOND JUDICIAL
DISTRICT**

Jade Joseph Nickels,

Case No. 62-CV-21-728

Plaintiff,

ORDER

v.

Drew Evans, Superintendent, Bureau of Criminal
Apprehension,

Defendant.

The above-entitled matter came on for a hearing before the undersigned, on December 16, 2021, pursuant to Defendant's Motions to Dismiss and for Summary Judgment and Plaintiff's Motion for Summary Judgment. Brad Colbert, *Esq.*, and Julia Durst, certified student attorney, appeared on behalf of the Plaintiff. Angela Kiese, *Esq.*, appeared on behalf of the Defendant. All appearances were made remotely via Zoom.


Based on all the files, pleadings, records, and proceedings herein, and on the arguments and submissions of the parties, the court makes the following:

ORDER

1. Defendant's motion to dismiss is granted.
2. Plaintiff's motion for summary judgment is denied.
3. The attached Memorandum is incorporated herein as part of this order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:



Dated: March 24, 2022

Grewing, Sara (Judge)
Mar 24 2022 1:54 PM

The Honorable Sara R. Grewing
Judge of District Court

MEMORANDUM

FACTUAL BACKGROUND

Plaintiff, Jade Nickels, has brought a § 1983 action against Defendant, Drew Evans, the Superintendent of the Minnesota Bureau of Criminal Apprehension (“Defendant” or “Superintendent Evans”), in his official capacity. Plaintiff has alleged various violations of procedural and substantive due process, promissory estoppel, and asserts that the predatory offender registration statute is a bill of attainder. Defendant denies these allegations.

For the purposes of Defendant's Rule 12 Motion, the facts in Plaintiff's Verified Complaint are accepted as true. The relevant facts from the Verified Complaint may be summarized as follows.

Statement of Undisputed Facts

In 1998, Plaintiff was charged with one count of Possession of Schedule 1, 2, 3, 4 – Not Small Amount of Marijuana in the Fifth Degree and one count of Criminal Sexual Conduct in the First Degree. Both charges arose out of an incident where Plaintiff and another individual sexually assaulted the female victim. Compl. ¶ 5; Def. Ex. 1. On August 3, 1998, pursuant to a plea agreement offered by the State, Plaintiff pled guilty to Criminal Sexual Conduct in the Fifth Degree and Possession of a Controlled Substance in the Fifth Degree. Compl. ¶ 6; Def. Mem. Exs. 3, 4-1, 4-3, 4-4, 4-6, 4-7, 5. The plea petition itself did not discuss predatory offender registration. Def. Mem. Exs. 4-3, 4-4. Plaintiff also entered an *Alford* plea to both amended counts. Compl. ¶ 7. During the August 3rd hearing, Mr. Nickels' attorney stated that one of the reasons the plea agreement was reached was to alleviate Mr. Nickels from having to register as a sex offender. Def. Mem. Exs. 5-2, 5-3, 5-9. The adjudicating court sentenced Mr. Nickels and convicted him of the offenses as outlined in the plea agreement. Compl. ¶ 7. Mr. Nickels was sentenced to an executed seventeen-month sentence. Compl. ¶ 7. Neither the court nor the parties discussed registration any further at the time of sentencing.

In May 1999, Mr. Nickels first registered as a predatory offender in connection with the 1998 offenses. Def. Mem. Ex. 6-1. At some point between 2000 and 2002, Mr. Nickels failed to register. The Anoka County Attorney's Office declined to prosecute Mr. Nickels' failure to register after reviewing the Crow Wing County court records. Def. Mem. Exs. 7-4, 7-5.

Plaintiff moved to Seattle, Washington at some point between January and May 2002. When the Minnesota Bureau of Criminal Apprehension ("BCA") learned of

this, the BCA attempted to get him into compliance with the registration statute. Registration forms were sent to Plaintiff's Washington state address. Def. Mem. Exs. 8-1–8-8. Plaintiff returned to Minnesota at some time between 2002 and 2003. The BCA learned of his return when Plaintiff was arrested in Crow Wing county on controlled substance and property crimes charges. Def. Mem. Exs. 8-12, 9-1–9-4. Plaintiff was arrested again in August 2003 in Forest Lake, Minnesota. After his second arrest, the BCA again attempted to get Plaintiff into compliance with the registration statute. Def. Mem. Exs. 9-5, 9-6. Address verification forms were filed for the years 2003 and 2004. Def. Mem. Exs. 9-7–9-16, 41-4.

Between 2004 and 2020, Mr. Nickels was in and out of incarceration. As a result of his incarceration, Plaintiff intermittently complied with the obligation to register and send updated address verification forms. Mr. Nickels most recent release from incarceration was in February 2020.¹

Procedural History

Plaintiff commenced this action against Defendant on February 12, 2021, alleging that the registration requirement has caused him undue hardship in accessing state-provided housing, stable employment, and reintegration into the community. Compl. ¶ 10. Specifically, Plaintiff alleges violations of his constitutional right to due process, asserts that the BCA should be required to enforce its promise that Plaintiff should not register as a predatory offender, and asserts that Minn. Stat. 243.166 is an unlawful bill of attainder. *Id.*

¹ Mr. Nickels most recent release from incarceration stems from an arrest on an unrelated controlled substance matter.

¶¶ 11–22. Plaintiff requests injunctive relief from this Court.

Defendant brought Motions to Dismiss and for Summary Judgment on November 17, 2021. Plaintiff filed their Motion for Summary Judgment on November 18, 2021. The Court held a hearing on both Motions and took the matter under advisement.

STANDARD OF REVIEW

I. Motion to Dismiss

A court should dismiss a complaint when it fails to state a claim for which the court may grant relief. Minn. R. Civ. P. 12.02(e). “On motions to dismiss for failure to state a claim on which relief can be granted, courts consider only those facts alleged in the complaint, accepting those facts as true and construing all reasonable inferences in favor of the non-moving party.” *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 826-27 (Minn. 2011). A court need not give any deference to a plaintiff’s legal conclusions, opinions, or statements that are general and indefinite. *Martens v. Minn. Mining & Mfg.*, 616 N.W.2d 732, 747 (Minn. 2000). However, in considering the facts alleged in a complaint, the district court may “consider...the documents referred to in the complaint in addition to the complaint itself.” *Hamann v. Park Nicollet Clinic*, 792 N.W.2d 468, 469 (Minn. App. 2010). A motion to dismiss should be granted if “it appears to a certainty that no facts, which could be introduced consistent with the pleading[s], exist which would support granting the relief demanded.” *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019); *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963).

II. Summary Judgment

Summary judgment is appropriate when the record, taken as a whole, shows that “there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.01. “A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03). Summary judgment is improper when reasonable minds could differ and draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

Minnesota case law has long held that when considering a motion for summary judgment, “the district court must view the evidence in the light most favorable to the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 72 (Minn. 1997). The party opposing summary judgment cannot rely on conclusory allegations in the pleadings for support, but must present specific facts that demonstrate “genuine issues of material fact” for trial. *W.J.L. v. Bugge*, 573 N.W.2d 677, 680 (Minn. 1998). Further, when determining whether a genuine issue of material fact for trial exists, the court is “not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons could not draw different conclusions from the evidence presented.” *DLH*, 566 N.W.2d at 70.

LEGAL ANALYSIS

I. Statute of Limitations

Defendant contends that Mr. Nickels' claims are barred by the statute of limitations and his Complaint must be dismissed on that ground alone. Defendant argues that any alleged harm accrued by May 1999, when Mr. Nickels first registered as a predatory offender, and that Mr. Nickels had six years from May 1999 to bring his claims before this Court. Plaintiff maintains that Mr. Nickels' claims are not barred by the statute of limitations. Plaintiff argues that even if Mr. Nickels' claims were brought after the limitations period ended, Mr. Nickels has been subjected to a continuing violation that essentially restarts the limitations period each time he has been injured by the violation.

The issue here is whether Mr. Nickels' claims result from a continuing violation or if it is a discrete, one-time act that accrued in May 1999. If it is a continuing violation, Plaintiff's claims would not be time-barred, and the instant lawsuit must proceed. However, if Plaintiff's claims accrued in May 1999 when Mr. Nickels first registered, his claims would be time-barred, and his suit must be dismissed.

Statute of Limitations

Under Minnesota law, the statute of limitations commences once a cause of action has accrued. Minn. Stat. § 541.01 (2020).² *See also Hamann*, 808 N.W.2d at 832. A cause of action accrues when “it could be brought in a court of law without dismissal for failure to state a claim.” *Bonhiver v. Graff*, 311 Minn. 111, 117, 248 N.W.2d 291, 296 (1976) (citation omitted). *See also Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.* 916 N.W.2d 491, 496 (Minn. 2018). A claim accrues when there exist

² “Actions can only be commenced within the periods prescribed in this chapter, after the cause of action accrues...”

sufficient operative facts to support each element of a claim. *Id.*; *Hamann*, 808 N.W.2d at 832. In this case, the applicable statute of limitations for each of Plaintiffs claims is six years. Minn. Stat. § 541.05, subd. 1(5).³

Generally, there are no exceptions to the statute of limitations and courts are not empowered to make exceptions to such statutes. *State v. Bies*, 258 Minn. 139, 145, 103 N.W.2d 228, 234 (1960). One exception that exists to the statute of limitations is the continuing violation doctrine. This doctrine provides that a cause of action does not lapse if the alleged wrongful act was a continuing violation. *Sigurdson v. Isanti Cnty*, 448 N.W.2d 62, 66 (Minn. 1989). The premise of the continuing violations doctrine is that a continuous practice “over a period of time [can] indicate a systematic repetition of the same policy and constitute a sufficiently integrated pattern to form, in effect, a single ... act.” *Hubbard v. United Press Int’, Inc.*, 330 N.W.2d 428, 440 n.11 (Minn. 1983). When applying the continuing violations doctrine, courts must

³ Congress did not include a statute of limitations for claims brought under 42 U.S.C. § 1983. When federal statutes do not contain their own limitations periods, courts apply the most appropriate or analogous statute of limitations from the forum state. *Wilson v. Garcia*, 471 U.S. 261, 266–68 (1985); *Egerdahl v. Hibbing Comm. College*, 72 F.3d 615, 617 (8th Cir. 1995). In *Wilson*, “the [United States] Supreme Court held that § 1983 claims are best characterized as personal injury actions for statute of limitations purposes.” *Cook v. City of Minneapolis*, 617 F. Supp. 461, 463 (D. Minn. 1985). See also *Owens v. Okure*, 488 U.S. 235, 240–41 (1989) (“a State’s personal injury state of limitations should be applied to all § 1983 claims”). Courts in Minnesota have held that § 1983 claims are governed by the six-year limitations period for personal injury claims. *Helleloid v. Indep. Sch. Dist. No. 361*, 149 F. Supp. 2d 863 (D. Minn. 2001); *Berg v. Groshen*, 437 N.W.2d 75, 77 (Minn. App. 1989) (holding that the six-year statute of limitations applies to § 1983 claims). Since § 1983 claims are construed by the courts as personal injury actions, Minn. Stat. § 541.05, subd. 1 applies here.

focus on whether a present violation exists. *See Sigurdson*, 448 N.W.2d at 67. “So long as the violation continues into the limitations period, the statute of limitations does not bar the claim.” *Lewison v. Hutchinson*, 929 N.W.2d 444, 450 (Minn. App. 2019).

Minnesota’s Predatoy Offender Registration Statute

Minnesota law requires certain offenders who are charged with criminal sexual conduct to register even if they are convicted of another offense “arising out of the same set of circumstances.” Minn. Stat. § 243.166, subd. 1b(a)(1)(iii) (2020). Registrants are required to “continue to register” for ten years after they initially register. *Id.* subd. 6(a). Failure to comply with registration is a felony. *Id.* subd. 5(a). Furthermore, a failure to comply with registration results in an additional five-year period where the registrant must continue to register. *Id.* subd. 6(b). The statute also provides that a registrant who is “incarcerated due to a new conviction for a new offense or following a revocation of probation, supervised release, or conditional release for any offense” must continue to register for an additional ten years from when the person was last released or the supervision period expires. *Id.* subd. 6(c).

Application to Mr. Nickels’ Claims

Mr. Nickels, after pleading guilty to an amended count of criminal sexual conduct, was first notified of the registration requirement in May 1999, after which he began to register. Mr. Nickels has mostly complied with the registration requirement from when he first registered until now. Between 1999 and 2021, Mr. Nickels has been incarcerated on new convictions, with the most recent incarceration occurring in February 2020. As a result of his incarcerations on new convictions unrelated to the original criminal sexual conduct conviction, Mr.

Nickels must register as a predatory offender for an additional ten years. Def. Ex. 40-1, 40-2, 40-3, 42. *See also* Minn. Stat. § 243.166, subd. 6(c). Currently, Mr. Nickels' current registration end date is February 26, 2030, which is ten years from the date he was last released from incarceration in February 2020. *Id.* Ex. 42 ¶ 4.

Plaintiff argues that although Mr. Nickels was originally required to register in May 1999, the continuing violation doctrine applies, and the statute of limitations was tolled because of the BCA recent determination that Mr. Nickels must continue to register as a predatory offender for ten more years after his most recent incarceration in February 2020. Furthermore, Plaintiff contends that Mr. Nickels experiences an injury each time he is required to complete address verification forms, or provide notice of address changes, employment changes, or vehicle changes. Plaintiff points the Court to an order issued in a similar case. *See Drobec v. Drew Evans, Superintendent of the Minnesota Bureau of Criminal Apprehension*, No. 62-CV-18-3944, *1 (Minn. Dist. Ct. Dec. 5, 2019).

In *Drobec*, a jury found the plaintiff, Darcy Drobec, guilty of one count of second-degree intentional murder, one count of second-degree felony murder, and one count of kidnapping. *Id.* at *1. Ms. Drobec was adjudicated guilty of all three counts and was sentenced to serve a total of 550 months. *Id.* *2. When Ms. Drobec committed the offense and was convicted, neither of the crimes for which Drobec was charged or convicted were registrable offenses under the Minnesota predatory offender registration law, nor did they arise out of the same set of circumstances as a registrable offense. *Id.* As a result, the requirement to register as a predatory offender was not addressed at any point prior to, during, or after trial.

In 1999, the Minnesota legislature amended the predatory registration laws, making it so that all charges arising from kidnapping offenses became registrable. *Id.* In 2004 while Drobec was incarcerated, ten years after being sentenced, she was informed that she was required to register as a predatory offender. *Id.* Ms. Drobec had to complete the registration and notice forms and submit them to the BCA. *Id.* Ms. Drobec was not afforded a hearing before being required to register. *Id.* The *Drobec* Court found that each time Ms. Drobec was required to register was a separate actionable wrong, resulting in a new six-year period each time she registered. *Id.* *8 –*9. As a result, the *Drobec* Court concluded that Ms. Drobec’s continuing obligation to register was a continuing violation, and that her lawsuit did not exceed the statute of limitations. *Id.* *7 –*8.

Defendant argues that the continuing violation doctrine is not applicable here and that the injury culminated when Mr. Nickels was first required to register in May 1999. Defendant points the Court to an unpublished case, *Jones v. Evans*, as instructive on the issue of continuing violation.⁴ In *Jones*, the plaintiff was charged with third-degree criminal sexual conduct in 2005. 2018 WL 3716094, A18-0139 *1, *1 (Minn. App. 2018). In 2005, Mr. Jones plead guilty to, and was adjudicated guilty of, an amended charge of fifth-degree criminal sexual conduct. *Id.* Mr. Jones was first informed

⁴ While unpublished opinions of the court of appeals are not precedential, district courts may consider unpublished court of appeals decisions for their persuasive and instructive value. *Adams v. Harpstead*, 947 N.W.2d 838, 846 (Minn. App. 2020). See also *White Bear Lake Restoration Assoc., ex rel. State v. Minn. Dept. of Nat. Res.*, 928 N.W.2d 351 (Minn. App. 2019), *aff’d in part, rev’d in part*, 946 N.W.2d 373 (Minn. 2020); *Kruse v. Comm’r of Pub. Safety*, 906 N.W.2d 554 (Minn. App. 2018).

of needing to register in 2006, after which he did register. *Id.* Mr. Jones twice failed to comply with the registration requirement and was duly convicted of his failure to comply with registering under the predatory offender registration statute. *Id.*

Mr. Jones sued the BCA Superintendent in 2016, bringing claims for violation of his substantive and procedural due process rights, and promissory estoppel. *Id.* at *3. Mr. Jones alleged that the BCA wrongfully required him to register, arguing that his 2005 plea agreement contemplated that he would not have to register as a predatory offender. *Id.* The Court of Appeals upheld the District Court's decision to dismiss his claims as the applicable limitations six-years limitations period expired. *Id.* at *3. Furthermore, the Court of Appeals noted that the continuing violation theory did not apply to Mr. Jones' claims because Mr. Jones was challenging the initial determination that he must register. As such, Mr. Jones' claims were based upon a discrete act by the BCA. Any additional and ongoing reporting requirements that Mr. Jones was subject to were merely a consequence of the BCA's initial determination, not a new cause of action.

While the Court finds the *Jones* opinion persuasive and instructive, the Court is hesitant to find that all of Mr. Nickels' claims must be dismissed because the limitations period expired. The Court is persuaded by Plaintiff's arguments that Mr. Nickels new ten-year registration period constitutes a continuing violation. Here, Plaintiff was first required to register in May 1999. Between 1999 and 2020, Mr. Nickels has largely complied with the registration requirements. Within that same timeframe, Mr. Nickels has been incarcerated several times, with his most incarceration being in February 2020 which triggered a new ten-year registration period. Plaintiff commenced his lawsuit in February 2021, twenty-two

years after the BCA first required that he register as a predatory offender and one-year after his most recent incarceration.

While this is a close call for the Court, the Court does find that Mr. Nickels has been subjected to a continuing violation when he was made to register for ten more years after his 2020 incarceration on an unrelated conviction. The Court finds that a new six-year limitations period is triggered, and that Mr. Nickels' claims are not time-barred.

II. Motion to Dismiss

Plaintiff's Statutory Requirement to Register as a Predatory Offender

As previously mentioned, Minn. Stat. § 243.166 requires certain individuals to register as predatory offenders. The statute provides for how long registrants are required to continue to register as well as what happens when a registrant fails to comply or is incarcerated on a new conviction for a new offense. *Id.* The statute provides that when a person is required to register, the sentencing court must tell the person of the duty to register, require the person to complete a registration form, and forward that form, along with the complaint and sentencing documents, to the BCA. *Id.* The court may not modify an offender's statutory obligation to register as a predatory offender in the pronounced sentence. *Id.* If, as happened here, the court does not notify a person of the registration obligation at the time of sentencing, the court does not notify a person of the registration requirement at the time of sentencing, the person's assigned corrections agent or law enforcement officer are required to notify the person of the registration obligation. *Id.*

Here, Mr. Nickels was initially charged with one count of first-degree criminal sexual conduct. He later pled guilty to, and was convicted of, fifth-degree criminal sexual conduct. While not an enumerated offense that would require registration, that fifth-degree criminal sexual conduct arose from the same set of circumstances that led to the first-degree charge, specifically, Plaintiff's sexual assault of a female in a motel room in 1998. Between 1999 and 2021, Mr. Nickels has been incarcerated on new convictions.

The issue of "arising out of the same set of circumstances" has been previously addressed by the Minnesota Supreme Court in *Boutin v. LaFleur*, where the Court held that a person was required to register as a predatory offender when convicted of an offense that arose from the same set of circumstances as one of the enumerated registration offenses. 591 N.W.2d 711 (Minn. 1999). The *Boutin* Court held that: "Once an offender is charged with and convicted of a crime that satisfies these elements, the offender must be notified of his duty to register." *Id.* at 714-15. This principle has been consistently applied by the courts since *Boutin*.

There is no dispute that there was probable cause to support the original charge of fifth-degree criminal sexual conduct. The fact that Mr. Nickels pled guilty to a lesser charge does not extinguish probable cause for the original charge. Given this, Plaintiff was properly required to register as a predatory offender. Plaintiff was charged with first-degree criminal sexual conduct and was convicted of an offense that arose from the same set of circumstances. Defendant properly required Plaintiff to register as a predatory offender, and to have Plaintiff continue to register pursuant to Minn. Stat. 243.166. Therefore, Plaintiff is not entitled to declaratory or

injunctive relief relieving him of his registration obligations.

Violations of Procedural Due Process

Plaintiff alleges that Defendant violated his constitutional right to procedural due process under both the United States and Minnesota Constitutions by requiring him to register as a predatory offender. U.S. Const. amend. XIV, § 1; Minn. Const. art. 1, § 7. “When procedural due process is at issue, we must first determine whether a protectable liberty interest is at stake.” *Id.* at 718. Minnesota has adopted the “stigma-plus” test, which holds that “a liberty interest is implicated when a loss of reputation is coupled with the loss of some other tangible interest.” *Id.* (citing *Paul v. Davis*, 424 U.S. 693, 701-02, 96 S. Ct. 1155, 1160-61, 47 L. Ed. 2d 405 (1976)).

The Minnesota Supreme Court has held that Minn. Stat. § 243.166 did not violate procedural or substantive due process. *Boutin*, 519 N.W.2d at 716-20. Regarding procedural due process, the *Boutin* Court explained that requiring a person to register as a predatory offender did not meet the “stigma-plus” test. *Id.* at 718. “In *Boutin*, the [S]upreme [C]ourt held that although being labeled a predatory offender is injurious to one’s reputation, that injury must still be coupled with the loss of some other recognizable interest.” *Bedeau v. Evans*, 926 N.W.2d 425, 431-32 (Minn. App. 2019) (citing *Boutin*, 519 N.W.2d at 718). The *Boutin* Court further maintained that complying with the requirements of the registration statute was a minimal burden and was not a sufficiently important interest the “stigma-plus” test requires. *Id.*⁵

⁵ The Court of Appeals also noted that “there is no recognizable interest in being free from having to update address information.” *Id.*

Since the predatory offender registration statute was enacted, additional requirements have been added by the Legislature. The changes include new procedures for individuals with no primary address or who are working outside of the jurisdiction in which one is registered, as well as procedures for recording real property, employment, vehicles, and health care facility notification.

Plaintiff has filed an affidavit attesting to the difficulties he has encountered with the registration requirement. Specifically, Plaintiff notes that having to register makes it difficult for him to find a job and housing. *Aff. of Jade Joseph Nickels*, ¶ 9. He also points out that he has struggled with substance abuse and his having to register interferes with his ability to gain placement at residential treatment facilities due to his offender status. *Id.* Plaintiff also attests that his offender status has impacted his personal life. He voluntarily agreed to terminate his parental rights to his daughter. *Id.* ¶ 10. He has been accosted based on his status as a predatory offender, causing him mental anguish, and his status has prevented his significant others from having their kids around him. *Id.* ¶¶ 10–12.

While the Court sympathizes with Mr. Nickels and the difficulties he has had to face, the Court is not fully persuaded that he has been or is likely to be deprived of any recognizable interest. The appellate court has held that the additional reporting requirements are a minimal burden imposed on offenders. *See Bedeau*, 926 N.W.2d at 432. In *Bedeau*, the appellate court concluded that the additional requirements are similar to the updating address information, which the Supreme Court had previously determined was a minimal burden and not a sufficiently important interest as required by the stigma-plus test. *Id.* Plaintiff contends that he has had difficulty finding housing and employment as a result of his

registration as a predatory offender. Again, while the Court deeply sympathizes with Mr. Nickels, it cannot find sufficient evidence to suggest that the registration requirement is the primary cause of his difficulties rather than his convictions and most recent incarceration.

In addition, Plaintiff argues that when he accepted the plea agreement, and was convicted of fifth-degree criminal sexual conduct, it was understood by everyone that he would not have to register as a predatory offender. The sentencing transcript shows two specific points where registration was briefly discussed. First, Mr. Nickels attorney acknowledged that one of the reasons for entering into the plea agreement was to alleviate Mr. Nickels of his obligation to register as a predatory offender. Pln. Ex. 1, Sentencing Tr. at 2, 2–7. The second instance was during the inquiry of Mr. Nickels. Mr. Nickels' attorney asked Mr. Nickels if he understood that the plea was being entered into so that he would not have to register as an offender. *Id.* at 9, 21–23. Mr. Nickels replied that he understood. *Id.* at 9, 24. Outside of those two instances, the fact that Mr. Nickels would not have to register was not addressed at any other point during sentencing. The prosecutor did not address that Mr. Nickels would not have to register as an offender.⁶ The sentencing court did not acknowledge or specifically pronounce that Mr. Nickels would not have to register as a predatory offender or address registration in any way.

⁶ At the beginning of the sentencing hearing, Mr. Nickels attorney recited the essence of the plea agreement, which is where it was first mentioned that the agreement was being entered so that Mr. Nickels would not have to register. The sentencing court asked the prosecutor if that was a fair recitation of the facts. The prosecution agreed. *See* Pln. Ex. 1, Sentencing Tr. at 2.

Plaintiff was first informed of his registration requirement in 1999, when the BCA contacted him to get him to register. If Plaintiff was promised that he would not have to register if he pled guilty, or was misinformed or misunderstood the plea agreement, his remedy was to seek withdrawal of the guilty plea. Plaintiff sought the withdrawal of the plea, which the Crow Wing County court denied. As such, Plaintiff cannot establish that there has been a violation of procedural due process here.

Violations of Substantive Due Process

Plaintiff also alleges that Defendant denied him his constitutional right to substantive due process. *See* U.S. Const. amend. XIV, § 1; Minn. Const. art. 1, § 7. Substantive due process requires plaintiffs to show that there was a government action that deprived them of a fundamental right and that a government official acted in a manner that shocked the conscience. In *Boutin*, the Minnesota Supreme Court held that the registration statute did not implicate a fundamental right and that the statute was rationally related to the legitimate state interest of solving crimes. *Boutin*, 591 N.W.2d at 716-20. Similarly, the Eighth Circuit also held in *Gunderson v. Hvass* that Minnesota's registration statute is non-punitive and rationally related to a legitimate government purpose. 339 F.3d 639 (8th Cir. 2003).

Plaintiff cannot establish a violation of substantive due process here. Plaintiff argues that the registration requirement has interfered with his fundamental right to parent his child. Specifically, Plaintiff argues that a county human services agency could petition to terminate his rights at any point. Plaintiff asserts that in 2019 a petition has been brought to terminate his parental rights to his daughter. Mr. Nickels ultimately voluntarily chose to terminate his parental rights. Since Mr. Nickels has

voluntarily terminated his parental rights, Mr. Nickels has neither shown a fundamental right at stake, nor any governmental action that shocks the conscience. Mr. Nickels substantive due process violation claim is dismissed.

Promissory Estoppel

Promissory estoppel is an equitable doctrine that implies a contract in law where none exists in fact. *Martens v. Minn. Min. & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). To establish a claim for promissory estoppel, there must be: (1) a clear and definite promise; (2) the promisor intended to induce reliance and the promisee relied on the promise to his detriment; and (3) the promise must be enforced to prevent injustice. *Id.* Plaintiff asserts that the BCA promised to Mr. Nickels that if he pled guilty to an amended charge of criminal sexual conduct, he would not have to register as a predatory offender. Mr. Nickels relied on that promise when he entered into the plea agreement and is now seeking enforcement of that promise to prevent injustice to himself.

Defendant argues that the BCA did not make a promise to Mr. Nickels. First, Defendant points to the fact that the BCA is not in privity with the prosecutor who made the charging decision. Second, even if there was privity, there was no clear and definite promise from the prosecutor. The Court agrees with Defendant that the BCA itself did not make a promise to Mr. Nickels. Furthermore, the Court has struggled to find where in the sentencing transcript, the prosecutor made a clear, definite statement that it promised to Mr. Nickels that he would not have to register as an offender. Specifically, the sentencing transcript does not contain any discussion from the prosecutor, or between defense counsel and the prosecutor, as to the alleged promise to not have Mr.

Nickels register as a predatory offender. Instead, only defense counsel addressed the alleged reasoning behind the plea agreement. As such, Plaintiff's claim for promissory estoppel fails and should be dismissed.

Bill of Attainder

Plaintiff brings a claim that Minn. Stat. § 243.166 constitutes an unconstitutional bill of attainder. Under both the United States and Minnesota Constitutions, no bill of attainder shall be passed. U.S. Const. art. I, § 9, cl. 3; Minn. Const. art. 1, § 11. A bill of attainder is defined as "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." *Council of Indep. Tobacco Mfrs. of America v. State*, 685 N.W.2d 467, 474 (Minn. App. 2004). *See also Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 468 (1984). To support a claim that a statute is a bill of attainder, plaintiff must show that the statute singles out an identifiable individual or group and punishes them without a judicial trial. *Council of Indep. Tobacco Mfrs. of America*, 685 N.W.2d at 474.

Minnesota courts have determined that registration as a sex offender does not advance the traditional aims of punishment and is therefore not punitive. *See State v. Manning*, 532 N.W.2d 244, 248 (Minn. App. 1995). *See also State v. Larson*, No. A05-40, 2016 WL 618857, *4 (Minn. App. Mar. 14, 2006). Minnesota's predatory offender registration statute is not an unconstitutional bill of attainder.

CONCLUSION

For the reasons discussed above, Defendant's Motion to Dismiss is granted, and Plaintiff's Complaint is dismissed. Since the Court granted Defendant's motion, the Court does not address Defendant's Motion for

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Summary Judgment. Plaintiff's Motion for Summary Judgment is denied.

APPENDIX D

**STATE OF MINNESOTA
COURT OF APPEALS**

JUDGMENT

Jade Joseph Nickels,
Appellant,
vs. Drew Evans,
Superintendent, Bureau of
Criminal Apprehension,
Respondent.

Appellate Court# A22-0729
Trial Court# 62-CV-21-728

Pursuant to a decision of the Minnesota Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Ramsey County District Court, Civil Division herein appealed from be and the same hereby is affirmed and judgment is entered accordingly.

Dated and signed: December 8, 2023

FOR THE COURT

*Attest: Christa Rutherford-Block
Clerk of the Appellate Courts*

*By: Crystal Roquette
Assistant Clerk*

**STATE OF MINNESOTA
COURT OF APPEALS**

TRANSCRIPT OF JUDGMENT

I, Christa Rutherford-Block, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

*Witness my signature at the Minnesota Judicial
Center,*

In the City of St. Paul

December 8, 2023

Dated

*Attest: Christa Rutherford-Block
Clerk of the Appellate Courts*

*By: Crystal Roquette
Assistant Clerk*

APPENDIX E
STATE OF MINNESOTA
IN SUPREME COURT
A22-0729

Jade Joseph Nickels,
Petitioner,

vs.

Drew Evans, Superintendent
Bureau of Criminal Apprenson,
Respondent.

ORDER


Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the motion of Jade Joseph Nickels for leave to proceed in forma pauperis is granted.

IT IS FURTHER ORDERED that the petition of Jade Joseph Nickels for further review is denied.

Dated: November 28, 2023

BY THE COURT:


G. Barry Anderson
Associate Justice

HUDSON, C.J., took no part in the consideration or decision of this case.

APPENDIX F

Amend. XIV.

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any

State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX G

Section 1983 of Title 42, United States Code, provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX H

243.166 REGISTRATION OF PREDATORY OFFENDERS.

Subdivision 1.[Repealed, 2005 c 136 art 3 s 31]

Subd. 1a. **Definitions.** (a) As used in this section, unless the context clearly indicates otherwise, the following terms have the meanings given them.

(b) "Bureau" means the Bureau of Criminal Apprehension.

(c) "Corrections agent" means a county or state probation agent or other corrections employee. The term also includes United States Probation and Pretrial Services System employees who work with a person subject to this section.

(d) "Dwelling" means the building where the person lives under a formal or informal agreement to do so. However, dwelling does not include a supervised publicly or privately operated shelter or facility designed to provide temporary living accommodations for homeless individuals as defined in section 116L.361, subdivision 5.

(e) "Incarceration" and "confinement" do not include electronic home monitoring.

(f) "Law enforcement authority" or "authority" means the chief of police of a home rule charter or statutory city and the county sheriff of an unincorporated area in that county. An authority must be located in Minnesota.

(g) "Motor vehicle" has the meaning given in section 169.011, subdivision 92.

(h) "Primary address" means the mailing address of the person's dwelling. If the mailing address is different from the actual location of the dwelling, primary address

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also includes the physical location of the dwelling described with as much specificity as possible.

(i) "School" includes any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education, that the person is enrolled in on a full-time or part-time basis.

(j) "Secondary address" means the mailing address of any place where the person regularly or occasionally stays overnight when not staying at the person's primary address. If the mailing address is different from the actual location of the place, secondary address also includes the physical location of the place described with as much specificity as possible. However, the location of a supervised publicly or privately operated shelter or facility designated to provide temporary living accommodations for homeless individuals as defined in section 116L.361, subdivision 5, does not constitute a secondary address.

(k) "Treatment facility" means a residential facility, as defined in section 244.052, subdivision 1, and residential substance use disorder treatment programs and halfway houses licensed under chapter 245A, including, but not limited to, those facilities directly or indirectly assisted by any department or agency of the United States.

(l) "Work" includes employment that is full time or part time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

Subd. 1b. **Registration required.** (a) A person shall register under this section if:

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(1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:

(i) murder under section 609.185, paragraph (a), clause (2);

(ii) kidnapping under section 609.25;

(iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345; 609.3451, subdivision 3, paragraph (b); or 609.3453;

(iv) indecent exposure under section 617.23, subdivision 3; or

(v) surreptitious intrusion under the circumstances described in section 609.746, subdivision 1, paragraph (h);

(2) the person was charged with or petitioned for a violation of, or attempt to violate, or aiding, abetting, or conspiring to commit any of the following and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:

(i) criminal abuse in violation of section 609.2325, subdivision 1, paragraph (b);

(ii) false imprisonment in violation of section 609.255, subdivision 2;

(iii) solicitation, inducement, or promotion of the prostitution of a minor or engaging in the sex trafficking of a minor in violation of section 609.322;

(iv) a prostitution offense in violation of section 609.324, subdivision 1, paragraph (a);

(v) soliciting a minor to engage in sexual conduct in

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violation of section 609.352, subdivision 2 or 2a, clause (1);

(vi) using a minor in a sexual performance in violation of section 617.246; or

(vii) possessing pornographic work involving a minor in violation of section 617.247;

(3) the person was sentenced as a patterned sex offender under section 609.3455, subdivision 3a; or

(4) the person was charged with or petitioned for, including pursuant to a court martial, violating a law of the United States, including the Uniform Code of Military Justice, similar to an offense or involving similar circumstances to an offense described in clause (1), (2), or (3), and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances.

(b) A person also shall register under this section if:

(1) the person was charged with or petitioned for an offense in another state similar to an offense or involving similar circumstances to an offense described in paragraph (a), clause (1), (2), or (3), and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances;

(2) the person enters this state to reside, work, or attend school, or enters this state and remains for 14 days or longer or for an aggregate period of time exceeding 30 days during any calendar year; and

(3) ten years have not elapsed since the person was released from confinement or, if the person was not confined, since the person was convicted of or adjudicated delinquent for the offense that triggers registration, unless the person is subject to a longer registration period under the laws of another state in which the person has

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been convicted or adjudicated, or is subject to lifetime registration.

If a person described in this paragraph is subject to a longer registration period in another state or is subject to lifetime registration, the person shall register for that time period regardless of when the person was released from confinement, convicted, or adjudicated delinquent.

(c) A person also shall register under this section if the person was committed pursuant to a court commitment order under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States, regardless of whether the person was convicted of any offense.

(d) A person also shall register under this section if:

(1) the person was charged with or petitioned for a felony violation or attempt to violate any of the offenses listed in paragraph (a), clause (1), or a similar law of another state or the United States, or the person was charged with or petitioned for a violation of any of the offenses listed in paragraph (a), clause (2), or a similar law of another state or the United States;

(2) the person was found not guilty by reason of mental illness or mental deficiency after a trial for that offense, or found guilty but mentally ill after a trial for that offense, in states with a guilty but mentally ill verdict; and

(3) the person was committed pursuant to a court commitment order under section 253B.18 or a similar law of another state or the United States.

Subd. 2. **Notice.** When a person who is required to register under subdivision 1b, paragraph (a), is sentenced

or becomes subject to a juvenile court disposition order, the court shall tell the person of the duty to register under this section and that, if the person fails to comply with the registration requirements, information about the offender may be made available to the public through electronic, computerized, or other accessible means. The court may not modify the person's duty to register in the pronounced sentence or disposition order. The court shall require the person to read and sign a form stating that the duty of the person to register under this section has been explained. The court shall make available the signed court notification form, the complaint, and sentencing documents to the bureau. If a person required to register under subdivision 1b, paragraph (a), was not notified by the court of the registration requirement at the time of sentencing or disposition, the assigned corrections agent shall notify the person of the requirements of this section. If a person required to register under subdivision 1b, paragraph (a), was not notified by the court of the registration requirement at the time of sentencing or disposition and does not have a corrections agent, the law enforcement authority with jurisdiction over the person's primary address shall notify the person of the requirements. When a person who is required to register under subdivision 1b, paragraph (c) or (d), is released from commitment, the treatment facility shall notify the person of the requirements of this section. The treatment facility shall also obtain the registration information required under this section and forward it to the bureau.

Subd. 3. **Registration procedure.** (a) Except as provided in subdivision 3a, a person required to register under this section shall register with the corrections agent as soon as the agent is assigned to the person. If the person does not have an assigned corrections agent or is unable to locate the assigned corrections agent, the

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person shall register with the law enforcement authority that has jurisdiction in the area of the person's primary address.

(b) Except as provided in subdivision 3a, at least five days before the person starts living at a new primary address, including living in another state, the person shall give written notice of the new primary address to the assigned corrections agent or to the law enforcement authority with which the person currently is registered. If the person will be living in a new state and that state has a registration requirement, the person shall also give written notice of the new address to the designated registration agency in the new state. A person required to register under this section shall also give written notice to the assigned corrections agent or to the law enforcement authority that has jurisdiction in the area of the person's primary address that the person is no longer living or staying at an address, immediately after the person is no longer living or staying at that address. The written notice required by this paragraph must be provided in person. The corrections agent or law enforcement authority shall, within two business days after receipt of this information, forward it to the bureau. The bureau shall, if it has not already been done, notify the law enforcement authority having primary jurisdiction in the community where the person will live of the new address. If the person is leaving the state, the bureau shall notify the registration authority in the new state of the new address. The person's registration requirements under this section are suspended after the person begins living in the new state and the bureau has confirmed the address in the other state through the annual verification process on at least one occasion. The person's registration requirements under this section are reactivated if the person resumes living in Minnesota and the registration time period

described in subdivision 6 has not expired.

(c) A person required to register under subdivision 1b, paragraph (b), because the person is working or attending school in Minnesota shall register with the law enforcement authority that has jurisdiction in the area where the person works or attends school. In addition to other information required by this section, the person shall provide the address of the school or of the location where the person is employed. A person shall comply with this paragraph within five days of beginning employment or school. A person's obligation to register under this paragraph terminates when the person is no longer working or attending school in Minnesota.

(d) A person required to register under this section who works or attends school outside of Minnesota shall register as a predatory offender in the state where the person works or attends school. The person's corrections agent, or if the person does not have an assigned corrections agent, the law enforcement authority that has jurisdiction in the area of the person's primary address shall notify the person of this requirement.

Subd. 3a. **Registration procedure when person lacks primary address.** (a) If a person leaves a primary address and does not have a new primary address, the person shall register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours of the time the person no longer has a primary address.

(b) Notwithstanding the time period for registration in paragraphs (a) and (c), a person with a primary address of a correctional facility who is scheduled to be released from the facility and who does not have a new primary address shall register with the law enforcement authority that has jurisdiction in the area where the person will be

staying at least three days before the person is released from the correctional facility.

(c) A person who lacks a primary address shall register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours after entering the jurisdiction. Each time a person who lacks a primary address moves to a new jurisdiction without acquiring a new primary address, the person shall register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours after entering the jurisdiction.

(d) Upon registering under this subdivision, the person shall provide the law enforcement authority with all of the information the individual is required to provide under subdivision 4a. However, instead of reporting much specificity as possible.

(e) Except as otherwise provided in paragraph (f), if a person continues to lack a primary address, the person shall report in person on a weekly basis to the law enforcement authority with jurisdiction in the area where the person is staying. This weekly report shall occur between the hours of 9:00 a.m. and 5:00 p.m. The person is not required to provide the registration information required under subdivision 4a each time the offender reports to an authority, but the person shall inform the authority of changes to any information provided under this subdivision or subdivision 4a and shall otherwise comply with this subdivision.

(f) If the law enforcement authority determines that it is impractical, due to the person's unique circumstances, to require a person lacking a primary address to report weekly and in person as required under paragraph (e), the authority may authorize the person to follow an alternative reporting procedure. The authority shall

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consult with the person's corrections agent, if the person has one, in establishing the specific criteria of this alternative procedure, subject to the following requirements:

(1) the authority shall document, in the person's registration record, the specific reasons why the weekly in-person reporting process is impractical for the person to follow;

(2) the authority shall explain how the alternative reporting procedure furthers the public safety objectives of this section;

(3) the authority shall require the person lacking a primary address to report in person at least monthly to the authority or the person's corrections agent and shall specify the location where the person shall report. If the authority determines it would be more practical and would further public safety for the person to report to another law enforcement authority with jurisdiction where the person is staying, it may, after consulting with the other law enforcement authority, include this requirement in the person's alternative reporting process;

(4) the authority shall require the person to comply with the weekly, in-person reporting process required under paragraph (e), if the person moves to a new area where this process would be practical;

(5) the authority shall require the person to report any changes to the registration information provided under subdivision 4a and to comply with the periodic registration requirements specified under paragraph (g); and

(6) the authority shall require the person to comply with the requirements of subdivision 3, paragraphs (b) and (c), if the person moves to a primary address.

(g) If a person continues to lack a primary address and continues to report to the same law enforcement authority, the person shall provide the authority with all of the information the individual is required to provide under this subdivision and subdivision 4a at least annually, unless the person is required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States. If the person is required to register under subdivision 1b, paragraph (c), the person shall provide the law enforcement authority with all of the information the individual is required to report under this subdivision and subdivision 4a at least once every three months.

(h) A law enforcement authority receiving information under this subdivision shall forward registration information and changes to that information to the bureau within two business days of receipt of the information.

(i) For purposes of this subdivision, a person who fails to report a primary address will be deemed to be a person who lacks a primary address, and the person shall comply with the requirements for a person who lacks a primary address.

Subd. 4. **Contents of registration.** (a) The registration provided to the corrections agent or law enforcement authority, must consist of a statement in writing signed by the person, giving information required by the bureau, fingerprints, biological specimen for DNA analysis as defined under section 299C.155, subdivision 1, and photograph of the person taken at the time of the person's release from incarceration or, if the person was

not incarcerated, at the time the person initially registered under this section. The registration information also must include a written consent form signed by the person allowing a treatment facility or residential housing unit or shelter to release information to a law enforcement officer about the person's admission to, or residence in, a treatment facility or residential housing unit or shelter. Registration information on adults and juveniles may be maintained together notwithstanding section 260B.171, subdivision 3.

(b) For persons required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States, in addition to other information required by this section, the registration provided to the corrections agent or law enforcement authority must include the person's offense history and documentation of treatment received during the person's commitment. This documentation is limited to a statement of how far the person progressed in treatment during commitment.

(c) Within three days of receipt, the corrections agent or law enforcement authority shall forward the registration information to the bureau. The bureau shall ascertain whether the person has registered with the law enforcement authority in the area of the person's primary address, if any, or if the person lacks a primary address, where the person is staying, as required by subdivision 3a. If the person has not registered with the law enforcement authority, the bureau shall notify that authority.

(d) The corrections agent or law enforcement authority may require that a person required to register under this section appear before the agent or authority to

be photographed. The agent or authority shall submit the photograph to the bureau.

(1) Except as provided in clause (2), the agent or authority may photograph any offender at a time and frequency chosen by the agent or authority.

(2) The requirements of this paragraph shall not apply during any period where the person to be photographed is: (i) committed to the commissioner of corrections and incarcerated, (ii) incarcerated in a regional jail or county jail, or (iii) committed to the commissioner of human services and receiving treatment in a secure treatment facility.

(e) During the period a person is required to register under this section, the following provisions apply:

(1) Except for persons registering under subdivision 3a, the bureau shall mail a verification form to the person's last reported primary address. This verification form must provide notice to the offender that, if the offender does not return the verification form as required, information about the offender may be made available to the public through electronic, computerized, or other accessible means. For persons who are registered under subdivision 3a, the bureau shall mail an annual verification form to the law enforcement authority where the offender most recently reported. The authority shall provide the verification form to the person at the next weekly meeting and ensure that the person completes and signs the form and returns it to the bureau. Notice is sufficient under this paragraph if the verification form is sent by first class mail to the person's last reported primary address, or for persons registered under subdivision 3a, to the law enforcement authority where the offender most recently reported.

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(2) The person shall mail the signed verification form back to the bureau within ten days after receipt of the form, stating on the form the current and last address of the person's residence and the other information required under subdivision 4a.

(3) In addition to the requirements listed in this section, an offender who is no longer under correctional supervision for a registration offense, or a failure to register offense, but who resides, works, or attends school in Minnesota, shall have an in-person contact with a law enforcement authority as provided in this section. If the person resides in Minnesota, the in-person contact shall be with the law enforcement authority that has jurisdiction over the person's primary address or, if the person has no address, the location where the person is staying. If the person does not reside in Minnesota but works or attends school in this state, the person shall have an in-person contact with the law enforcement authority or authorities with jurisdiction over the person's school or workplace. During the month of the person's birth date, the person shall report to the authority to verify the accuracy of the registration information and to be photographed. Within three days of this contact, the authority shall enter information as required by the bureau into the predatory offender registration database and submit an updated photograph of the person to the bureau's predatory offender registration unit.

(4) If the person fails to mail the completed and signed verification form to the bureau within ten days after receipt of the form, or if the person fails to report to the law enforcement authority during the month of the person's birth date, the person is in violation of this section.

(5) For any person who fails to mail the completed

and signed verification form to the bureau within ten days after receipt of the form and who has been determined to be subject to community notification pursuant to section 253D.32 or is a risk level III offender under section 244.052, the bureau shall immediately investigate and notify local law enforcement authorities to investigate the person's location and to ensure compliance with this section. The bureau also shall immediately give notice of the person's violation of this section to the law enforcement authority having jurisdiction over the person's last registered primary address.

For persons required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States, the bureau shall comply with clause (1) at least two times each year. For persons who, under section 244.052, are assigned to risk level III and who are no longer under correctional supervision for a registration offense or a failure to register offense, the bureau shall comply with clause (1) at least two times each year. For all other persons required to register under this section, the bureau shall comply with clause (1) each year within 30 days of the anniversary date of the person's initial registration.

(f) For persons registered under this section on July 1, 2019, each person, on or before one year from that date, must provide a biological specimen for the purpose of DNA analysis to the probation agency or law enforcement authority where that person is registered. A person who provides or has provided a biological specimen for the purpose of DNA analysis under chapter 299C or section 609.117 meets the requirements of this paragraph.

(g) For persons registered under this section on July 1, 2019, each person, on or before one year from that date, must provide fingerprints to the probation agency or law enforcement authority where that person is registered.

Subd. 4a. **Information required to be provided.** (a) A person required to register under this section shall provide to the corrections agent or law enforcement authority the following information:

(1) the person's primary address;

(2) all of the person's secondary addresses in Minnesota, including all addresses used for residential or recreational purposes;

(3) the addresses of all Minnesota property owned, leased, or rented by the person;

(4) the addresses of all locations where the person is employed;

(5) the addresses of all schools where the person is enrolled;

(6) the year, model, make, license plate number, and color of all motor vehicles owned or regularly driven by the person;

(7) the expiration year for the motor vehicle license plate tabs of all motor vehicles owned by the person; and

(8) all telephone numbers including work, school, and home and any cellular telephone service.

(b) The person shall report to the agent or authority the information required to be provided under paragraph (a), clauses (2) to (8), within five days of the date the clause becomes applicable. If because of a change in circumstances any information reported under paragraph (a), clauses (1) to (8), no longer applies, the person shall

immediately inform the agent or authority that the information is no longer valid. If the person leaves a primary address and does not have a new primary address, the person shall register as provided in subdivision 3a.

Subd. 4b. **Health care facility; notice of status.** (a) For the purposes of this subdivision:

(1) "health care facility" means a facility:

(i) licensed by the commissioner of health as a hospital, boarding care home or supervised living facility under sections 144.50 to 144.58, or a nursing home under chapter 144A;

(ii) licensed by the commissioner of health as an assisted living facility as defined in section 144G.01; or

(iii) licensed by the commissioner of human services as a residential facility under chapter 245A to provide adult foster care, adult mental health treatment, substance use disorder treatment to adults, or residential services to persons with disabilities;

(2) "home care provider" has the meaning given in section 144A.43; and

(3) "hospice provider" has the meaning given in section 144A.75.

(b) Prior to admission to a health care facility or home care services from a home care provider or hospice services from a hospice provider, a person required to register under this section shall disclose to:

(1) the health care facility employee or the home care provider or hospice provider processing the admission the person's status as a registered predatory offender under this section; and

(2) the person's corrections agent, or if the person does not have an assigned corrections agent, the law enforcement authority with whom the person is currently required to register, that admission will occur.

(c) A law enforcement authority or corrections agent who receives notice under paragraph (b) or who knows that a person required to register under this section is planning to be admitted and receive, or has been admitted and is receiving health care at a health care facility or home care services from a home care provider or hospice services from a hospice provider, shall notify the administrator of the facility or the home care provider or the hospice provider and deliver a fact sheet to the administrator or provider containing the following information: (1) name and physical description of the offender; (2) the offender's conviction history, including the dates of conviction; (3) the risk level classification assigned to the offender under section 244.052, if any; and (4) the profile of likely victims.

(d) Except for a hospital licensed under sections 144.50 to 144.58, if a health care facility receives a fact sheet under paragraph (c) that includes a risk level classification for the offender, and if the facility admits the offender, the facility shall distribute the fact sheet to all residents at the facility. If the facility determines that distribution to a resident is not appropriate given the resident's medical, emotional, or mental status, the facility shall distribute the fact sheet to the patient's next of kin or emergency contact.

(e) If a home care provider or hospice provider receives a fact sheet under paragraph (c) that includes a risk level classification for the offender, the provider shall distribute the fact sheet to any individual who will provide direct services to the offender before the individual begins

to provide the service.

Subd. 4c. **Notices in writing; signed.** All notices required by this section must be in writing and signed by the person required to register. For purposes of this section, a signature is as defined in section 645.44, subdivision 14, by an electronic method established by the bureau, or by use of a biometric for the person. If a biometric is used, the person must provide a sample that is forwarded to the bureau so that it can be maintained for comparison purposes to verify the person's identity. The bureau shall determine the signature methods available for use and post this determination on the bureau's website.

Subd. 5. **Criminal penalty.** (a) A person required to register under this section who was given notice, knows, or reasonably should know of the duty to register and who:

(1) knowingly commits an act or fails to fulfill a requirement that violates any provision of this section;

(2) intentionally provides false information to a corrections agent, law enforcement authority, or the bureau is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) Except as provided in paragraph (c), a person convicted of violating paragraph (a) shall be committed to the custody of the commissioner of corrections for not less than a year and a day, nor more than five years.

(c) A person convicted of violating paragraph (a), who has previously been convicted of or adjudicated delinquent for violating this section or a similar statute of another state or the United States, shall be committed to the custody of the commissioner of corrections for not less

than two years, nor more than five years.

(d) Prior to the time of sentencing, the prosecutor may file a motion to have the person sentenced without regard to the mandatory minimum sentence established by this subdivision. The motion must be accompanied by a statement on the record of the reasons for it. When presented with the motion, or on its own motion, the court may sentence the person without regard to the mandatory minimum sentence if the court finds substantial and compelling reasons to do so. Sentencing a person in the manner described in this paragraph is a departure from the Sentencing Guidelines.

(e) A person convicted and sentenced as required by this subdivision is not eligible for probation, parole, discharge, work release, conditional release, or supervised release, until that person has served the full term of imprisonment as provided by law, notwithstanding the provisions of sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135.

Subd. 5a. Ten-year conditional release for violations committed by level III offenders. Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines, when a court commits a person to the custody of the commissioner of corrections for violating subdivision 5 and, at the time of the violation, the person was assigned to risk level III under section 244.052, the court shall provide that after the person has been released from prison, the commissioner shall place the person on conditional release for ten years. The terms of conditional release are governed by section 609.3455, subdivision 8.

Subd. 6. Registration period. (a) Notwithstanding the provisions of section 609.165, subdivision 1, and except

as provided in paragraphs (b), (c), and (d), a person required to register under this section shall continue to comply with this section until ten years have elapsed since the person initially registered in connection with the offense, or until the probation, supervised release, or conditional release period expires, whichever occurs later. For a person required to register under this section who is committed under section 253B.18, Minnesota Statutes 2012, section 253B.185, or chapter 253D, the ten-year registration period does not include the period of commitment.

(b) If a person required to register under this section fails to provide the person's primary address as required by subdivision 3, paragraph (b), fails to comply with the requirements of subdivision 3a, fails to provide information as required by subdivision 4a, or fails to return the verification form referenced in subdivision 4 within ten days, the commissioner of public safety shall require the person to continue to register for an additional period of five years. This five-year period is added to the end of the offender's registration period.

(c) If a person required to register under this section is incarcerated due to a conviction for a new offense or following a revocation of probation, supervised release, or conditional release for any offense, the person shall continue to register until ten years have elapsed since the person was last released from incarceration or until the person's probation, supervised release, or conditional release period expires, whichever occurs later.

(d) A person shall continue to comply with this section for the life of that person:

(1) if the person is convicted of or adjudicated delinquent for any offense for which registration is required under subdivision 1b, or any offense from

another state or any federal offense similar to the offenses described in subdivision 1b, and the person has a prior conviction or adjudication for an offense for which registration was or would have been required under subdivision 1b, or an offense from another state or a federal offense similar to an offense described in subdivision 1b;

(2) if the person is required to register based upon a conviction or delinquency adjudication for an offense under section 609.185, paragraph (a), clause (2), or a similar statute from another state or the United States;

(3) if the person is required to register based upon a conviction for an offense under section 609.342, subdivision 1, clause (a) to (c) or (e), or subdivision 1a, clause (a) to (e) or (h); 609.343, subdivision 1, clause (a) to (c) or (e), or subdivision 1a, clause (a) to (e) or (h); 609.344, subdivision 1, clause (a) or (c), or subdivision 1a, clause (a), (c), (g), or (h); or 609.345, subdivision 1, clause (a) or (c), or subdivision 1a, clause (a), (c), (g), or (h); or a statute from another state or the United States similar to the offenses described in this clause; or

(4) if the person is required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States.

(e) A person described in subdivision 1b, paragraph (b), who is required to register under the laws of a state in which the person has been previously convicted or adjudicated delinquent, shall register under this section for the time period required by the state of conviction or adjudication unless a longer time period is required elsewhere in this section.

Subd. 7. **Use of data.** (a) Except as otherwise provided in subdivision 4b or 7a or sections 244.052 and 299C.093, the data provided under this section is private data on individuals under section 13.02, subdivision 12.

(b) The data may be used only by law enforcement and corrections agencies for law enforcement and corrections purposes. Law enforcement or a corrections agent may disclose the status of an individual as a predatory offender to a child protection worker with a local welfare agency for purposes of doing a family assessment under chapter 260E. A corrections agent may also disclose the status of an individual as a predatory offender to comply with section 244.057.

(c) The commissioner of human services is authorized to have access to the data for:

(1) state-operated services, as defined in section 246.014, for the purposes described in section 246.13, subdivision 2, paragraph (b); and

(2) purposes of completing background studies under chapter 245C.

Subd. 7a. **Availability of information on offenders who are out of compliance with registration law.** (a) The bureau may make information available to the public about offenders who are 16 years of age or older and who are out of compliance with this section for 30 days or longer for failure to provide the offenders' primary or secondary addresses. This information may be made available to the public through electronic, computerized, or other accessible means. The amount and type of information made available is limited to the information necessary for the public to assist law enforcement in locating the offender.

(b) An offender who comes into compliance with this

section after the bureau discloses information about the offender to the public may send a written request to the bureau requesting the bureau to treat information about the offender as private data, consistent with subdivision 7. The bureau shall review the request and promptly take reasonable action to treat the data as private, if the offender has complied with the requirement that the offender provide the offender's primary and secondary addresses, or promptly notify the offender that the information will continue to be treated as public information and the reasons for the bureau's decision.

(c) If an offender believes the information made public about the offender is inaccurate or incomplete, the offender may challenge the data under section 13.04, subdivision 4.

(d) The bureau is immune from any civil or criminal liability that might otherwise arise, based on the accuracy or completeness of any information made public under this subdivision, if the bureau acts in good faith.

Subd. 8. [Repealed, 2005 c 136 art 3 s 31]

Subd. 9. Offenders from other states. (a) When the state accepts an offender from another state under a reciprocal agreement under the interstate compact authorized by section 243.1605, or under any authorized interstate agreement, the acceptance is conditional on the offender agreeing to register under this section when the offender is living in Minnesota.

(b) The Bureau of Criminal Apprehension shall notify the commissioner of corrections:

(1) when the bureau receives notice from a local law enforcement authority that a person from another state who is subject to this section has registered with the authority, unless the bureau previously received

information about the offender from the commissioner of corrections;

(2) when a registration authority, corrections agent, or law enforcement agency in another state notifies the bureau that a person from another state who is subject to this section is moving to Minnesota; and

(3) when the bureau learns that a person from another state is in Minnesota and allegedly in violation of subdivision 5 for failure to register.

(c) When a local law enforcement agency notifies the bureau of an out-of-state offender's registration, the agency shall provide the bureau with information on whether the person is subject to community notification in another state and the risk level the person was assigned, if any.

(d) The bureau must forward all information it receives regarding offenders covered under this subdivision from sources other than the commissioner of corrections to the commissioner.

(e) When the bureau receives information directly from a registration authority, corrections agent, or law enforcement agency in another state that a person who may be subject to this section is moving to Minnesota, the bureau must ask whether the person entering the state is subject to community notification in another state and the risk level the person has been assigned, if any.

(f) When the bureau learns that a person subject to this section intends to move into Minnesota from another state or has moved into Minnesota from another state, the bureau shall notify the law enforcement authority with jurisdiction in the area of the person's primary address and provide all information concerning the person that is available to the bureau.

(g) The commissioner of corrections must determine the parole, supervised release, or conditional release status of persons who are referred to the commissioner under this subdivision. If the commissioner determines that a person is subject to parole, supervised release, or conditional release in another state and is not registered in Minnesota under the applicable interstate compact, the commissioner shall inform the local law enforcement agency that the person is in violation of section 243.161. If the person is not subject to supervised release, the commissioner shall notify the bureau and the local law enforcement agency of the person's status.

Subd. 10. [Repealed, 1Sp2001 c 8 art 9 s 8]

Subd. 10. **Venue; aggregation.** (a) A violation of this section may be prosecuted in any jurisdiction where an offense takes place. However, the prosecutorial agency in the jurisdiction where the person last registered a primary address is initially responsible to review the case for prosecution.

(b) When a person commits two or more offenses in two or more counties, the accused may be prosecuted for all of the offenses in any county in which one of the offenses was committed.

Subd. 11. **Certified copies as evidence.** Certified copies of predatory offender registration records are admissible as substantive evidence when necessary to prove the commission of a violation of this section.

APPENDIX I

Filed in District Court
State of Minnesota
2/12/2021 3:12 PM

STATE OF MINNESOTA IN DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL
 DISTRICT
 Case type: § 1983

Jade Joseph Nickels,

COMPLAINT

Plaintiff,

vs.

Court file No.

Drew Evans, Superintendent,
Bureau of Criminal Apprehension,

Defendant.

Plaintiff Jade Joseph Nickels, by and through his attorneys, Legal Assistance to Minnesota Prisoners (LAMP), states the following:

INTRODUCTION

1. This is a civil action pursuant to 42 U.S.C. § 1983 against Drew Evans, the Superintendent of the Minnesota Bureau of Criminal Apprehension (BCA). The claim arises from the Defendant's determination that the

Plaintiff must register as a predatory offender even though Plaintiff was never convicted of a predatory offense and the State agreed that he would not have to register as a predatory offender. Forcing Plaintiff to register has harmed Plaintiff in many ways, including preventing him from accessing state provided housing for the homeless, making it more difficult to secure a job, and reintegrating into the community. The Defendant's actions have violated: (1) Plaintiff's constitutional right to substantive and procedural due process; (2) the doctrine against collateral estoppel; and (3) the right to be protected against unconstitutional bills of attainder.

PARTIES

2. Plaintiff Jade Joseph Nickels is a citizen of the State of Minnesota.

3. Defendant Drew Evans is the Superintendent of the Minnesota Bureau of Criminal Apprehension.

FACTUAL ALLEGATIONS

5. In 1998, the State charged Nickels with 1st Degree Criminal Sex Conduct, and 5th Degree Possession of Schedule 1,2,3,4, - Not Small Amount Marijuana.

6. The parties reached an agreement whereby the State agreed to reduce the 1st Degree Criminal Sexual Conduct charge to 5th Degree Gross-Misdemeanor Criminal Sexual Conduct in return for Nickels's agreement to plead guilty to 5th Degree Possession and 5th Degree Gross-Misdemeanor Criminal Sexual Conduct.

7. Nickels eventually entered an *Alford* plea to fifth degree possession and gross misdemeanor Criminal

Sexual Conduct in the 5th Degree. Nickels was sentenced to an executed prison sentence of seventeen months.

8. Nickels was not convicted of a felony predatory offense and was told during plea negotiations that if he pled to the gross misdemeanor criminal sexual conduct crime that he would not need to register as a predatory offender.

9. Defendant subsequently determined that Nickels was required to register as a predatory offender pursuant to Minn. Stat. § 243.166, subd. 1b (a)(1)(iii). The Defendant has extended the registration requirement since Nickels was originally required to register.

10. The registration requirement has caused Nickels undue hardship Forcing Plaintiff to register has harmed Plaintiff in many ways, including preventing him from accessing state provided housing for the homeless, making it more difficult to secure a job, and reintegrating into the community.

CLAIMS

CAUSE OF ACTION COUNT 1, PROCEDURAL DUE PROCESS VIOLATION

11. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

12. The Defendant, acting under color of state law, violated Plaintiff's right to procedural due process under the Fifth and Fourteenth Amendments of the United States Constitution and Article I § 7 of the Minnesota Constitution by determining that he is required to register as a predatory offender based on a dismissed charge without providing him any sort of process to challenge the dismissed charge and by not making an

individualized determination that the purpose of the statute is served by requiring Plaintiff to register based upon a dismissed charge.

**COUNT 2, SUBSTANTIVE DUE PROCESS
VIOLATION**

13. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

14. The Defendant violated Plaintiff's right to substantive due process under the Fifth and Fourteenth Amendments of the United States Constitution and Article I § 7 of the Minnesota Constitution by determining that Nickels is required to register as a predatory offender when he did not commit a predatory offense and by not making an individualized determination that the purpose of the statute is served by requiring Plaintiff to register based upon a dismissed charge.

COUNT 3, COLLATERAL ESTOPPEL

18. Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully stated herein.

19. The Defendant and his agents are estopped from requiring Plaintiff to register as predatory offender because the State agreed during the criminal process that Plaintiff would not have to register as a predatory offender.

COUNT 4, BILL OF ATTAINDER

21. Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully stated herein.

22. Minnesota Statute § 243.166 violates the prohibition on unconstitutional bills of attainder

mandated by Article 1, § 9 of the United States Constitution and Article 1, § 11 of the Minnesota Constitution by requiring all persons who have been charged, but not convicted, of a predatory offense to register as predatory offenders

RELIEF REQUESTED

Wherefore, Plaintiff prays that this Court grand judgment providing the following relief:

A. Preliminary and permanent injunctive relief enjoining the Defendant and his agents from requiring Nickels to register as a predatory offender.

B. Direct Defendant to remove Plaintiff from the predatory offender registry.

C. Declare that Minn. Stat. § 243.166 as applied to Plaintiff is unconstitutional.

D. For costs, disbursements, expert witness fees, and reasonable attorney's fees in accordance with 42 U.S.C. § 1988.

E. For all other legal and equitable relief that the court deems appropriate under the circumstances.

Dated: February 8, 2021

Respectfully submitted,

LEGAL ASSISTANCE TO
MN PRISONERS

/s/ Bradford Colbert
Bradford Colbert
License No. 166790

/s/ Maleah Otterson
Maleah Otterson

97a

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ACKNOWLEDGMENT

The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: February 8, 2021

/s/ Bradford Colbert
Bradford Colbert