City of Reedsburg
134 South Locust Street, P.O. Box 490
Reedsburg, WI 53959
Ph. 608-524-6404 Fax. 608-524-8458
www.reedsburgwi.gov

COMMON COUNCIL AGENDA

November 25, 2019

REEDSBURG CITY HALL COUNCIL CHAMBERS

7:00 PM

CALL TO ORDER:

ROLL CALL:

PLEDGE OF ALLEGIANCE:

THE COUNCIL WILL RECEIVE INFORMATION ON NON-AGENDA TOPICS BROUGHT BEFORE THE COUNCIL BY MEMBERS OF THE PUBLIC. THE COUNCIL WILL NOT DISCUSS THESE TOPICS, AND WILL NOT TAKE ACTION ON ANY OF THEM AT THIS MEETING.

I. CONSENT AGENDA (ONE MOTION APPROVES ALL ITEMS)::

1. Approve minutes for the meeting held on November 11, 2019.

II. MAYOR PROCLAMATIONS, PRESENTATIONS, APPOINTMENTS:

III. GENERAL BUSINESS:

1. Approve/Deny: Cancelling the December 23, 2019 Common Council Meeting.
2. Approve/Deny Resolution 4384-19 Amending the 2020 City Budget to reflect the recently released City assessed value amount.
3. Approve/Deny Resolution 4385-19 setting an Agency Fare for Managed Care Organizations related to the Shared-Ride Taxi System.

IV. RECOMMENDATIONS FROM BOARDS, COMMITTEES AND COMMISSIONS:

1. Ordinance Committee: Approve/Deny: First reading and set a Public Hearing for January 13, 2020 on Ordinance 1898-19 - Designated Offenders, amending the current ordinance titled "Sex Offenders Residency Requirements".
2. Plan Commission: Approve/Deny: Ordinance 1893-19 related to Parking Lot Landscaping. Second Reading and conduct a Public Hearing.
3. Plan Commission: Approve/Deny Ordinance 1894-19 Annexing City-owned parcels 042-0753-00000 & 042-0758-00000 from the Town of Winfield to the City of Reedsburg generally located on County Highway V north of Friske Drive. Second reading and conduct a Public Hearing.
4. Plan Commission: Approve/Deny Ordinance 1896-19 rezoning South School, 420 Plum Street, from Government to R-3 Residential. Second reading and conduct a Public Hearing.

V. COMMISSION, COMMITTEE, BOARD AND STAFF REPORTS:

The City of Reedsburg does not discriminate on the basis of disability in the admissions or access to, or treatment of or employment in, its programs or activities. Disability-related aids or services, including printed information in alternate formats, to enable persons with disabilities to participate in public meetings and programs are available by calling (608) 524-6404. To be able to meet the needs of a request for a different format contact the City Clerk-Treasurer at 134 S. Locust Street, Reedsburg, WI at least 48 hours prior to the commencement of the meeting so that any necessary arrangements can be made to accommodate each request.

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VI. OFFICE OF THE MAYOR:

1. Per section 19.85(1)(e) of the Wisconsin statutes, the Common Council will consider entering closed session for the purpose of deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, specifically a presentation on project financial updates.

VII. ADJOURN:

The City of Reedsburg does not discriminate on the basis of disability in the admissions or access to, or treatment of or employment in, its programs or activities. Disability-related aids or services, including printed information in alternate formats, to enable persons with disabilities to participate in public meetings and programs are available by calling (608) 524-6404. To be able to meet the needs of a request for a different format contact the City Clerk-Treasurer at 134 S. Locust Street, Reedsburg, WI at least 48 hours prior to the commencement of the meeting so that any necessary arrangements can be made to accommodate each request.

City of Reedsburg Meeting of the Common Council
November 11, 2019

Present: Mayor Dave Estes, Aldermen Craig Braunschweig, Dave Moon, Jason Schulte, Mike Gargano, Calvin Craker, Phil Peterson, Dave Knudsen, Tom Seamonson, and Brandt Werner.

Absent: None.

Others Present: Tim Becker, Jacob Crosetto, Pat Cummings, Brian Duvalle, Derek Horkan, Steve Zibell, Matt Scott, Citizens, Press.

Mayor Estes called the regular session of the Common Council to order at 7:00 p.m. in the Common Council Chambers.

Approve Consent Agenda: consisting the minutes from the Common Council meeting held on October 28, 2019; October 2019 Bills; and October 2019 Monthly Building Permit Report.

Motion: Craker, Second: Seamonson to approve the consent agenda. Motion carried 9-0.

RECOMMENDATIONS FOR BOARDS, COMMITTEES, AND COMMISSIONS

A. Ordinance Committee: Approve/Deny: Ordinance 1889-19 Amending Chapter 608 - Vehicles, All Terrain. Second Reading and Conduct a Public Hearing.
    a. **Motion: Werner, Second: Craker to approve Ordinance 1889-19 as presented. Motion carried 9-0 on a roll call vote.**

B. Plan Commission: Approve/Deny: Ordinance 1895-19 Amending Chapter 690 Extra Territorial Farm Sales & Accessory Buildings. Second Reading and Conduct a Public Hearing.
    a. **Motion: Peterson, Second: Schulte to approve Ordinance 1895-19 as presented. Motion carried 9-0 on a roll call vote.**

C. Ordinance Committee: Approve/Deny Ordinance 1897-19 Amending Chapter 315-9 Smoking Prohibited in Certain Areas; Use of Tobacco Products Prohibited. Second Reading and Conduct a Public Hearing.
    a. **Motion: Gargano, Second: Moon to approve Ordinance 1897-19 as presented. Motion carried 9-0 on a roll call vote.**

D. Airport Commission: Approve/Deny: Authorizing the City Administrator to sign a contract and lease agreement with Running, Inc. Transit Service to provide Shared-Ride Taxi Services to the City of Reedsburg.
    a. **Motion: Schulte, Second: Gargano to authorize the City Administrator to sign the lease agreement and contract with Running, Inc for the Shared-Ride Taxi Service in the City of Reedsburg. Motion carried 9-0.**

E. Public Works Committee: Approve/Deny: Authorizing the City to sign an agreement with Town & Country Engineering to provide a Wastewater Treatment Facility Plan.
    a. **Motion: Werner, Second: Seamonson to authorize the City Administrator to sign an agreement with Town & Country Engineering to provide a Wastewater Treatment Facility Plan. Motion carried 9-0.**

F. Finance Committee: Public Hearing to Approve/Deny Resolution 4383-19 Adopting the 2020 Budget and setting the Tax Levy.
    a. **Motion: Schulte, Second: Braunschweig to approve Resolution 4383-19 as presented. Motion carried 9-0 on a roll call vote.**

Motion: Knudsen, Second: Schulte to adjourn.

Motion carried 9-0. Meeting adjourned at 7:47 p.m.

Respectfully submitted,

Jacob Crosetto
City Clerk-Treasurer/Finance Director

RESOLUTION NO. 4384-19
RESOLUTION TO AUTHORIZE AMENDMENTS TO THE 2020 BUDGET

WHEREAS, Resolved, by the Common Council of the City of Reedsburg, Sauk County, Wisconsin:

That the following budget amendments are authorized for the budget year 2020:

Revenue		**Amendment**	**Budgeted**	**Balance**
10-411100	General Property Taxes	$52,000	$3,590,926	$3,642,926

Budget Totals:

Original Total General Fund Revenues: **$6,862,651**

Amended Total General Fund Revenues: **$6,914,651**

General Fund:		General Fund (Amended):	
General Government	~~6,862,651~~	General Government	6,914,651

ADOPTED on this 25th day of November, 2019.

_____
David G. Estes, Mayor

_____
Jacob Crosetto, City Clerk-Treasurer

The above resolution has been authorized by the governing body of the City of Reedsburg by Resolution No. 4384-19, dated November 25, 2019.

Date Passed: November 25, 2019

Vote: _____

RESOLUTION

(Establishing an Agency Fare for the City of Reedsburg Shared Ride Taxi Service)

FILE NO. **4385-19**

Whereas, the City of Reedsburg participates in the public transit program offered by the State of Wisconsin Department of Transportation under sec. 85.20 of the Wisconsin Statutes and Section 5311 of the Federal Transit Act as Amended, and;

Whereas, these programs require the City to set a Tariff Schedule that establishes fares for the operation of the public transit system under the State and Federal programs referenced above, and;

Whereas, UCS 49 CFR Part 37.131(c)(4) allows public transit programs to charge Agency Fares to organizations who receive funding to transport individuals served under certain programs, and;

Whereas, the use of Agency Fares will reduce the amount of local subsidy required of the City of Reedsburg to support the Shared Ride Taxi Program.

Now, Therefore, Be It Resolved that the Common Council of the City of Reedsburg does hereby adopt the following agency fare of $9.00 per one-way ride for the Shared Ride Taxi Program.

Be it Further Resolved that this Agency Fare shall be effective on January 1, 2020 and may be amended at any time to reflect a reasonable fare.

Passed by the Common Council of the City of Reedsburg this 25th day of November in the year 2019.

_____

David G. Estes, Mayor

_____

Jacob Crosetto, Clerk/Treasurer

ORDINANCE NO. 1898-19

(Designated Offenders – Chapter 501)

The City of Reedsburg, Sauk County, Wisconsin, does hereby ordain as follows:

SECTION 1: PURPOSE.

The purpose of this ordinance is to amend the current ordinance to recognize finding that the negative consequences of failing to regulate the movement of Designated Offenders is a hazard to children and the community. Thus, the Common Council has a duty and need to regulate where Designated Offenders reside and loiter within the City once they are reintegrated into the community. This section is a regulatory measure aimed at protecting the health and safety of the children in the City of Reedsburg from the risk that convicted Designated Offenders may reoffend in locations close to their residences. It is the intent of this section not tot impose a criminal penalty but rather to serve the City's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing residency or loitering; and by regulating certain activities that may be used by sexual offenders to prey on children.

SECTION II: PROVISION CREATED.

City of Reedsburg Code Section 501 is hereby amended in its entirety and shall read as detailed in the Reedsburg Code of Ordinances Chapter 501.

SECTION III: VALIDITY.

Should any section, clause or provision of the ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

SECTION IV: CONFLICTING PROVISIONS REPEALED.

All ordinances in conflict with any provisions of this ordinance are hereby repealed.

SECTION V: EFFECTIVE DATE.

This ordinance shall be in force from and after its introduction and publication as provided by statute.

SECTION VI: PART OF CODE:

This Ordinance becomes part of the City of Reedsburg Code, Chapter 501.

Dated this 13th day of January 2020.

David G. Estes, Mayor	Jacob Crosetto, Clerk/Treasurer
1st Reading at Council:	November 25, 2019
Public Hearing Noticed:	December 5, 2019
2nd Reading at Council/Public Hearing:	January 13, 2020
Published, Enactment Date:	January 23, 2020

ORDINANCE NO. _____

The City of Reedsburg, Sauk County, Wisconsin, does hereby ordain as follows:

SECTION I: PURPOSE.

This ordinance amends and updates the prior ordinance to address the protection, safety, and welfare of the citizens of the City of Reedsburg.

SECTION II: PROVISIONS REPEALED AND CREATED.

City of Reedsburg Code Chapter 501 is amended to read as follows:

§ 501-1. Findings and Purpose.

A. The Wisconsin legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community. Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons. The purpose of this section is to protect the public, to reduce the likelihood that convicted Designated Offenders will engage in such conduct in the future.

B. The United States Supreme Court has recognized that the risk of recidivism posed by Designated Offenders is high, and when convicted Designated Offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See Smith v. Doe. 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed. 2d 164 (2003) and McKune v. Lile, 536 U.S. 24, 34, 122 S.Ct. 2017, 153 L.Ed. 2d 47 (2002), citing United States Department of Justice Bureau of Justice Statistics, Sex Offenses and Offenders, 27 (1997) U.S. Department of Justice Bureau of Justice Statistics Recidivism of Prisoners Released in 1983 (1997).

C. The Common Council finds that the negative consequences of failing to regulate the movement of Designated Offenders is a hazard to children and the community. Thus, the Common Council has a duty and need to regulate where Designated Offenders reside and loiter within the City once they are reintegrated into the community. This section is a regulatory measure aimed at protecting the health and safety of the children in the City of Reedsburg from the risk that convicted Designated Offenders may reoffend in locations close to their residences. It is the intent of this section not to impose a criminal penalty but rather to serve the City's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing residence or loitering; and by regulating certain activities that may be used by sexual offenders to prey on children.

D. The City finds and declares that Designated Offenders are a serious threat to public safety. When Designated Offenders reenter society, they are much more likely than any other type of offender to be rearrested. Given the high rate of recidivism for Designated Offenders and that reducing opportunity and temptation is important to minimizing the risk of re-offense, there is a need to protect children where they

congregate or play in public places, in addition to the protections afforded by state law, near schools, day-care centers and other places children frequent. The City finds and declares that in addition to schools and day-care centers, children congregate or play at public parks and other Child Safe Locations as defined hereunder.

E. The Common Council notes that § 62.11(5), Wis. Stats., authorizes the Common Council to have power to act for the government and good order of the City, for its commercial benefit and for the health, safety and welfare of the public, and may carry out its powers by license, regulation and other necessary or convenient means.

F. This section will not apply to sexually violent persons, as defined in § 980.01(7), Wis. Stats., because these persons are controlled under the regulations of § 980, Wis. Stats.

§ 501-2. Definitions.

As used in this chapter, and unless the context otherwise requires, the following terms shall have the meanings indicated:

A. CHILD
A person who is less than 18 years of age.

B. CHILD SAFETY LOCATION
The site upon which any of the following are located:

(1) A public park, parkway, parkland, park facility;

(2) Reedsburg Recreation Center;

(3) The Reedsburg Boys and Girls Club;

(4) A public library;

(5) A recreational trail;

(6) A public playground;

(7) A school for children;

(8) Athletic fields used by children;

(9) A day-care center;

(10) A tutoring facility;

(11) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;

(12) Any facility for children (which means a public or private school or a group home, as defined in § 48.02(7), Wis. Stats.; a residential care center for children

and youth, as defined in § 48.02(15d), Wis. Stats.; a shelter care facility, as defined in § 48.02(17), Wis. Stats.; a foster home, as defined in § 48.02(6), Wis. Stats.; a treatment foster home, as defined in § 48.02(17q), Wis. Stats.; a day-care center licensed under § 48.65, Wis. Stats.; a day-care program established under § 120.13(14), Wis. Stats.; a day-care provider certified under § 48.651, Wis. Stats.; or a youth center, as defined in § 961.01(22), Wis. Stats.); and

(13) For-profit children's play facilities.

(14) Movie Theatre

(15) Public or private golf course or range.

(16) Public swimming pool or other aquatic facilities open to the public.

C. CHILD SAFETY ZONE
Any place within the City that is physically located within 1250 feet of any Child Safety Location.

D. DESIGNATED OFFENDER
Any person who is required to register under § 301.45, Wis. Stats., for any sexual offense against a child or any person who is required to register under § 301.45, Wis. Stats., and who has been designated special bulletin notification (SBN) Designated Offender pursuant to § 301.46(2) and (2m), Wis. Stats. (Hereinafter referred to as "Designated Offender"/"offender").

E. MINOR
A person under the age of 17.

F. PERMANENT RESIDENCE
A place where a person sleeps, abides, lodges, or resides for 14 or more consecutive days.

G. TEMPORARY RESIDENCE
A place where a person sleeps, abides, lodges, or resides which may include more than one location, and may be mobile or transitory for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or place where the person routinely sleeps, abides, lodges, or resides for a period of 14 or more consecutive or nonconsecutive days in any month and which is not the person's Permanent Residence.

H. SEXUALLY VIOLENT OFFENSE
Shall have the meaning as set forth in § 980.01(6), Wis. Stats., as amended from time to time.

§ 501-3. Residency restrictions.

A. Child Safety Zone restriction. Subject to the definitions in **§ 501-2** above, and the exceptions set forth in **§ 501-4** below, it is unlawful for a Designated Offender to establish a Permanent Residence or a Temporary Residence within a Child Safety Zone or any other place designated by the City as a place where children are known to congregate.

B. Measurement of distance. For purposes of determining the minimum distance separation, the restriction shall be measured by following a straight line from the closest outer property line of the Permanent Residence or Temporary Residence to the nearest Child Safety Location of a school, licensed daycare center, park, trail, playground, place of worship or any other place designated by the City where children are known to congregate. The City Clerk shall maintain an official map showing prohibited locations as defined by this section. The Clerk shall update the map at least annually to reflect any changes in the location of prohibited zones. These shall be designated on the map as Child Safety Zones.

§ 501-4. Residency restriction exceptions.

A Designated Offender residing within any Child Safety Zone does not commit a violation of this section if any of the following apply:

A. The person established the Permanent Residence or Temporary Residence and reported and registered the residence pursuant to § 301.45, Wis. Stats. before December 20, 2007, the original effective date of this Chapter.

B. The person is a minor and is not required to register under § 301.45 or § 301.46, Wis. Stats.

C. The school, licensed daycare center, park, trail, playground, place of worship or any other place designated by the City as a place where children are known to congregate within 1250 feet of the person's permanent or Temporary Residence was opened after the person established the Permanent Residence or Temporary Residence and registered the residence pursuant to Wis. Stats. § 301.45.

D. The Designated Offender's residence is within a jail, prison, juvenile facility or correctional facility at which the Designated Offender is serving a court-ordered sentence.

E. Any Designated Offender maintaining a residence within the City of Reedsburg that is exempted from the restrictions of this ordinance pursuant to Section § 501-4 shall lose the exemption if the Designated Offender's ownership or leasehold of the property ceases at any point in time, at which time the Designated Offender shall be subject to the restrictions of Section **§ 501-3**.

F. Any Designated Offender maintaining a residence within the City of Reedsburg who ceases to maintain a Permanent or Temporary Residence within the City shall be subject to the terms of Section **§ 501-3.**

§ 501-5. Original domicile restriction.

In addition to and notwithstanding the foregoing, but subject to **§ 501-4** above, no person and no individual who is a Designated Offender may establish a residence in the City of Reedsburg, unless such person was domiciled in the City of Reedsburg at the time of the offense resulting in the person's designation as a Designated Offender. This restriction does not apply if ten (10) or more years have passed since the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release and the Designated Offender has not

been convicted of any additional offense resulting in person meeting the Designated Offender definition herein.

§ 501-6 Renting real property.

A. No person shall let or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that it will be used as a permanent or Temporary Residence by a person prohibited from establishing such permanent or Temporary Residence pursuant to this section if such place, structure or part thereof, or trailer or other locale is located within a prohibited Child Safety Zone as described herein.

B. Notice to property owner. A Designated Offender shall notify any property owner from whom the Designated Offender intends to lease, or rent any place, structure, mobile home, trailer, or any part thereof, that the Designated Offender is a Designated Offender as defined in paragraph 2(a) of this Section, prior to entering into any lease or rental agreement.

C. Notice to Police Department. A Designated Offender and any property owner who leases or rents any place, structure, mobile home, trailer, or any part thereof, with the knowledge that it will be used as a Permanent or Temporary Residence by a Designated Offender, must each notify the Reedsburg Police Department in writing a minimum of fourteen (14) days prior to entering into a lease or rental agreement establishing a Permanent or Temporary Residence within the City. Any property owner governed by this paragraph shall also provide notice to the Reedsburg Police Department upon termination of the Designated Offender's tenancy for any reason whatsoever.

§ 501-7 Holiday events and public gatherings:

A. It is unlawful for a Designated Offender to actively take part in any public holiday event involving children where the distributing of candy or other items to children takes place, including but not limited to holiday parades or similar gatherings, Halloween trick-or-treating, wearing a seasonable costume in a public place, or wearing any other costume reasonably expected to attract children in a public place, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a Designated Offender.

B. Exception. This section does not apply to any event in which the Designated Offender is the parent or guardian of the child(ren) involved, and the Designated Offender's child(ren) are the only child(ren) present.

§ 501-8. Loitering.

A. It shall be unlawful for any Designated Offender as defined in § 501-2 above, to loiter or prowl within 1,250 feet of any school or school property, recreational trail, playground or park, any specialized school for children, including, but not limited to, gymnastics academy, martial arts academy, dance academy, music school, public beach or public library in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of children in the vicinity.

B. Unless flight by an actor or other circumstances makes it impractical, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by law enforcement at the time, would have dispelled the alarm.

C. An offender does not commit a violation of loitering in a Child Safety Zone as stated above, and the enumerated uses may allow such person on the property supporting such use, if any of the following apply:

(1) The property supporting an enumerated use also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:

(a) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and

(b) Written advance notice is made from the person to an individual in charge of the church, and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the person; and

(c) The person shall not participate in any religious education programs, which include individuals under the age of 18.

(2) The property supporting an enumerated use also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person as the child's parent upon the property, subject to the following conditions:

(a) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and

(b) Written advance notice of not less than seven (7) days is made from the person to an individual in charge of the use of the property, and written approval from an authorized individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the person.

(3) The property supporting an enumerated use also supports a polling location in a local, state or federal election, subject to the following conditions:

(a) The person is eligible to vote; and

(b) The designated polling place for the person is an enumerated use; and

(c) The person enters the polling place property and proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate, and the person vacates the property immediately after voting; and

(d) The property supporting an enumerated use also supports an elementary or secondary school lawfully attended by a person as a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.

§ 501-9. Child Safety Zone map.

The City Clerk's Office shall maintain an official map showing the Child Safety Zones within the City. The City Clerk's Office shall update the map at least annually to reflect any changes in the location of Child Safety Zones. The map is to be displayed in the office of the City Clerk. In the event of a conflict, the terms of this section shall control. In no event shall a failure to update the map in compliance with this section preclude the persecution or conviction of any Designated Offender under this section.

§ 501-10. Violations and penalties.

If a person violates Chapter 501, by establishing a residence or occupying residential premises within 1250 feet of those premises as described therein, without any exception(s) as also set forth above, the City Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police that upon all of the facts and circumstances and the purpose of this section such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health or safety of another or others, shall bring an action in the name of the City in the Circuit Court for Sauk County to permanently enjoin such residency as a public nuisance. If a person violates Chapter 501, in addition to the aforesaid injunctive relief, such person shall be subject to the general penalty provisions set forth under §§ 1-3 of this Code of the City of Reedsburg. Each day a violation continues shall constitute a separate offense. In addition, the City may undertake all other legal and equitable remedies to prevent or remove a violation of this section.

§ 501-11. Designated Offender Residency Appeal Board.

A. The above requirements of this section may be waived upon approval of the Designated Offender Residency Appeal Board through an appeal made by the affected party. Such appeal shall be made in writing to the City Clerk's office, who shall forward the request to the Designated Offender Residency Appeal Board, which shall receive reports from the Police Department as to the criminal background of the applicant and the nature and circumstances of the underlying offense requiring the registration under § 301.45 or § 301.46, Wis. Stats. The Board shall convene and shall hear from the applicant, as well as the Police Department or others who would be affected by this decision. The Board shall consider the amount of time which has passed since the original offense was committed; whether there has been evidence of any re-offense; whether the applicant is employed and the duration of that employment; whether the applicant has shown remorse; whether there has been evidence of rehabilitation; and finally, any factors that would suggest a likelihood of

re-offense.

B. The Designated Offender Residency Appeal Board shall consist of five (5) City residents appointed by the Mayor of the City and ratified by the Common Council. The members of the Designated Offender Residency Appeal Board shall serve in staggered, three-year terms with the initial Board having two members with three-year terms; two members with two-year terms; and a single member with a one-year term. The Chief of Police will act as a resource to the Appeals Board and will attend its meetings.

SECTION III: VALIDITY:

Should any section, clause or provision of the ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

SECTION IV: CONFLICTING PROVISIONS REPEALED:

All ordinances in conflict with any provision of this Ordinance are hereby repealed.

SECTION V: EFFECTIVE DATE:

This Ordinance shall be in force from and after its introduction and publication as provided by statute.

SECTION VI.

This ordinance becomes part of City of Reedsburg Code Chapter 501.

David G. Estes, Mayor

Jacob Crosetto, City Clerk-Treasurer

INTRODUCED: _____
PUBLISHED: _____
PASSED: _____

Chapter 501

SEX OFFENDERS RESIDENCY REQUIREMENTS

§ 501-1. Purpose.

The City finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders reenter society, they are likely to be rearrested for a new rape or sexual assault. Given the high rate of recidivism for sexual offenders and that reducing opportunity and temptation is important to minimizing the risk of reoffense, there is a need to protect children where they congregate or play in public places, in addition to the protections afforded by state law, near schools, day-care centers and other places children frequent. The City finds and declares that in addition to schools, day-care centers, and public parks; children congregate at movie theaters, swimming pools, athletic fields, libraries and recreational clubs and academies.

§ 501-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CRIME AGAINST CHILDREN — Any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or the federal government, having like elements necessary for the conviction, respectively:

A. Section 940.225(1), First Degree Sexual Assault;

B. Section 940.225(2), Second Degree Sexual Assault;

C. Section 940.225(3), Third Degree Sexual Assault;

D. Section 940.22(2), Sexual Exploitation by Therapist;

E. Section 940.30, False Imprisonment; victim was minor and not the offender's child;

F. Section 940.31, Kidnapping; victim was minor and not the offender's child;

G. Section 944.01, Rape (prior statute);

H. Section 944.06, Incest;

I. Section 944.10, Sexual Intercourse with a Child (prior statute);

J. Section 944.11, Indecent Behavior with a Child (prior statute);

K. Section 944.12, Enticing Child for Immoral Purposes (prior statute);

L. Section 948.02(1), First Degree Sexual Assault of a Child;

M. Section 948.02(2), Second Degree Sexual Assault of a Child;

N. Section 948.05, Sexual Exploitation of a Child;

O. Section 948.055, Causing a Child to View or Listen to Sexual Activity;

P. Section 948.06, Incest with a Child;

Q. Section 948.07, Child Enticement;

R. Section 948.08, Soliciting a Child for Prostitution;

S. Section 948.095, Sexual Assault of a Child by School Staff Person or a Person who Works or Volunteers with Children;

T. Section 948.11(2)(a) or (am), Exposing Child to Harmful Material; felony sections;

U. Section 948.12, Possession of Child Pornography;

V. Section 948.13, Convicted Child Sex Offender Working with Children;

W. Section 948.30, Abduction of Another's Child;

X. Section 971.17, Not Guilty by Reason of Mental Disease of an included offense; and

Y. Section 975.06, Sex Crimes Law Commitment.

PERSON — A person who has been convicted of or has been found delinquent of or has been found not guilty by reason of disease or mental defect of a sexually violent offense and/or crime against children.

RESIDENCE — The place where a person sleeps, which may include more than one location, and may be mobile or transitory.

SEXUALLY VIOLENT OFFENSE — Shall have the meaning as set forth in § 980.01(6), Wis. Stats., as amended from time to time.

§ 501-3. Residency restrictions.

A. A person shall not reside within 1,500 feet of the real property comprising any of the following:

(1) Any facility for children [which means a public or private school; a group home, as defined in § 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats.; a shelter care facility, as defined in § 48.02(17), Wis. Stats.; a day-care center licensed under § 48.65, Wis. Stats.; a day-care program established under § 120.13(14), Wis. Stats.; a day-care provider certified under § 48.651, Wis. Stats., or a youth center, as defined in § 961.01(22), Wis. Stats.]; and/or

(2) Any facility used for:

(a) A public park, parkway, parkland, park facility;

(b) A public library;

(c) A recreational trail;

(d) A public playground;

(e) A school for children;

(f) Athletic fields used by children;

(g) A movie theater;

(h) A day-care center;

(i) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;

(j) A public or private golf course or range; and

(k) Public swimming pool or other aquatic facilities open to the public.

B. The distance shall be measured from the closest boundary line of the real property supporting the residence of a person to the closest real property boundary line of the applicable, above-enumerated use(s). A map depicting the above-enumerated uses and the resulting residency restriction distances, as amended from time to time, is on file in the Office of the City Clerk-Treasurer for public inspection.

§ 501-4. Residency restriction exceptions.

A person residing within 1,500 feet of the real property comprising any of the uses enumerated in § 501-3 above does not commit a violation of this chapter if any of the following apply:

A. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.

B. The person has established a residence prior to the effective date of this chapter on December 20, 2007, which is within 1,500 feet of any of the uses enumerated in § 501-3 above, or such enumerated use is newly established after such effective date and it is located within such 1,000 feet of a residence of a person which was established prior to the effective date of this chapter.

C. The person is a minor or ward under guardianship.

§ 501-5. Original domicile restriction.

In addition to and notwithstanding the foregoing, but subject to § 501-4 above, no person and no individual who has been convicted of a sexually violent offense and/or a crime against children shall be permitted to reside in the City of Reedsburg, unless such person was domiciled in the City of Reedsburg at the time of the offense resulting in the person's most recent

conviction for committing the sexually violent offense and/or crime against children.

§ 501-6. Child safety zones.

A. No person shall enter or be present upon any real property upon which there exists any facility used for or which supports a use of:

(1) A public park, parkway, parkland, park facility;

(2) A public library;

(3) A recreational trail;

(4) A public playground;

(5) A school for children;

(6) Athletic fields used by children;

(7) A movie theater;

(8) A day-care center;

(9) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;

(10) A public or private golf course or range;

(11) Public swimming pool or other aquatic facilities open to the public; and

(12) Any facility for children [which means a public or private school; a group home, as defined in § 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats.; a shelter care facility, as defined in § 48.02(17), Wis. Stats.; a day-care center licensed under § 48.65, Wis. Stats.; a day care program established under § 120.13(14), Wis. Stats.; a day-care provider certified under § 48.651, Wis. Stats., or a youth center, as defined in § 961.01(22), Wis. Stats.].

B. A map depicting the above-enumerated uses and the resulting residency restriction distances, as amended from time to time, is on file in the office of the City Clerk-Treasurer for public inspection.

§ 501-7. Child safety zone exceptions.

A person does not commit a violation of § 501-6 above and the enumerated uses may allow such person on the property supporting such use if any of the following apply:

A. The property supporting an enumerated use under § 501-6 also supports a church, synagogue, mosque, temple or other house of

religious worship (collectively "church"), subject to the following conditions:

(1) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and

(2) Written advance notice is made from the person to an individual in charge of the church and approval from an individual in charge of the church as designated by the church is made in return of the attendance by the person; and

(3) The person shall not participate in any religious education programs which include individuals under the age of 18.

B. The property supporting an enumerated use under § 501-6 also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person as the child's parent upon the property, subject to the following conditions:

(1) Entrance and presence upon the property occurs only during the hours of activity related to the use as posted to the public; and

(2) Written advance notice is made from the person to an individual in charge of the use upon the property and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return of the attendance by the person.

C. The property supporting an enumerated use under § 501-6 also supports a polling location in a local, state or federal election, subject to the following conditions:

(1) The person is eligible to vote;

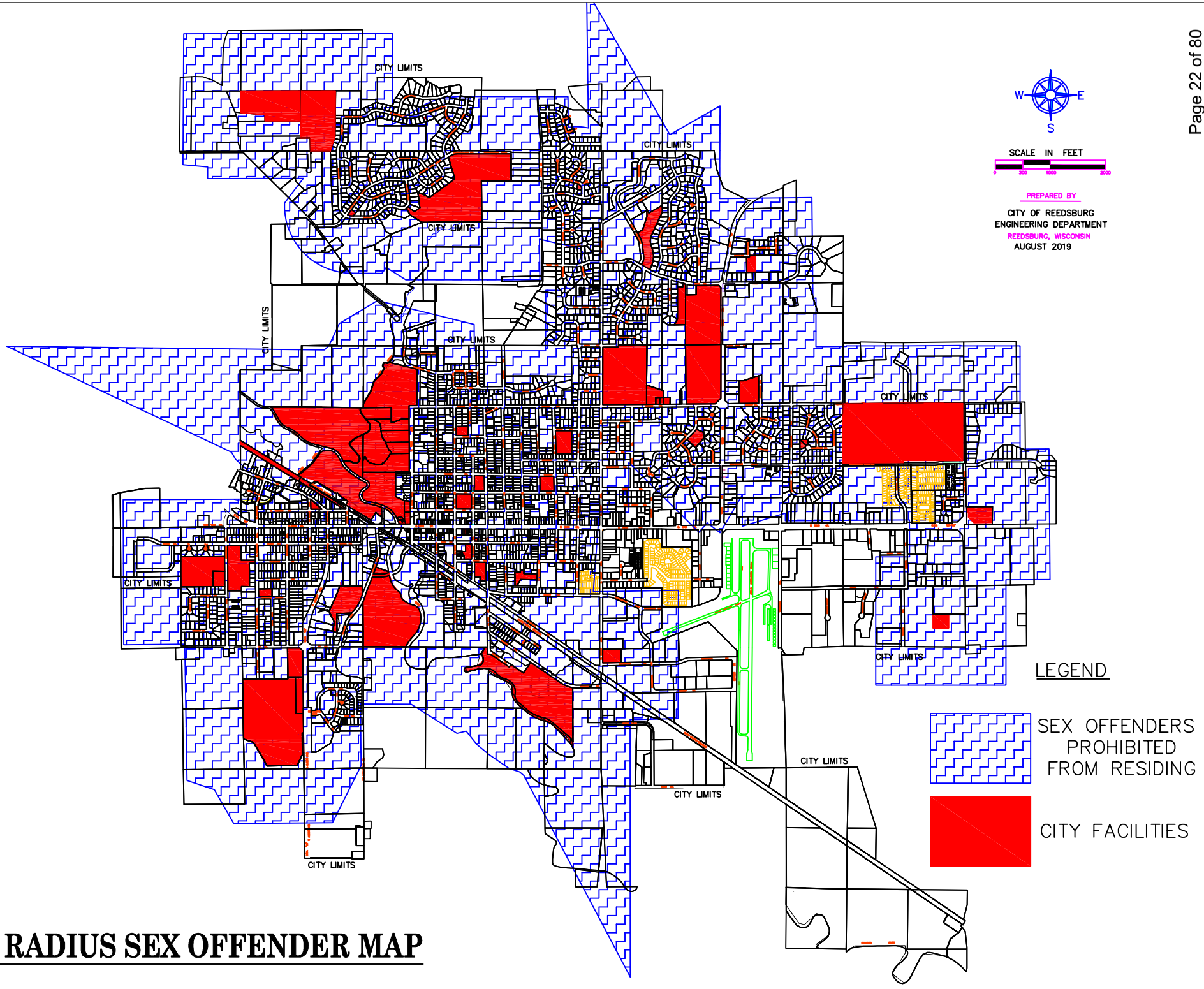
(2) The designated polling place for the person is an enumerated use; and

(3) The person enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate; and the person vacates the property immediately after voting.

D. The property supporting an enumerated use under § 501-6 also supports an elementary or secondary school lawfully attended by a person as a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.

§ 501-8. Enforcement; violations and penalties.

If any person violates § 501-2 above by establishing a residence within 1,500 feet of those premises as described herein, without any exception(s) as also set forth above, the City Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police that upon all of the facts and circumstances and the purpose of this chapter, such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or other, shall bring an action in the name of the City in the Circuit Court for Sauk County to permanently enjoin such residency as a public nuisance. If a person violates § 501-6 above, in addition to the aforesaid injunctive relief, such person shall be subject to forfeiture of not less than $25 nor more than $250 for each offense. Each day a violation continues shall constitute a separate offense. In addition, the City may undertake all other legal and equitable remedies to prevent or remove a violation of this chapter.



1250' RADIUS SEX OFFENDER MAP

ORDINANCE NO. _____

The City of Reedsburg, Sauk County, Wisconsin, does hereby ordain as follows:

SECTION I: PURPOSE.

This ordinance amends and updates the prior ordinance to address the protection, safety, and welfare of the citizens of the City of Reedsburg.

SECTION II: PROVISIONS REPEALED AND CREATED.

City of Reedsburg Code Chapter 501 is amended to read as follows:

§ 501-1. Findings and Purpose.

A. The Wisconsin legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community. Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons. The purpose of this section is to protect the public, to reduce the likelihood that convicted Designated Offenders will engage in such conduct in the future.

B. The United States Supreme Court has recognized that the risk of recidivism posed by Designated Offenders is high, and when convicted Designated Offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See Smith v. Doe. 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed. 2d 164 (2003) and McKune v. Lile, 536 U.S. 24, 34, 122 S.Ct. 2017, 153 L.Ed. 2d 47 (2002), citing United States Department of Justice Bureau of Justice Statistics, Sex Offenses and Offenders, 27 (1997) U.S. Department of Justice Bureau of Justice Statistics Recidivism of Prisoners Released in 1983 (1997).

C. The Common Council finds that the negative consequences of failing to regulate the movement of Designated Offenders is a hazard to children and the community. Thus, the Common Council has a duty and need to regulate where Designated Offenders reside and loiter within the City once they are reintegrated into the community. This section is a regulatory measure aimed at protecting the health and safety of the children in the City of Reedsburg from the risk that convicted Designated Offenders may reoffend in locations close to their residences. It is the intent of this section not to impose a criminal penalty but rather to serve the City's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing residence or loitering; and by regulating certain activities that may be used by sexual offenders to prey on children.

D. The City finds and declares that ~~sex offenders~~ Designated Offenders are a serious threat to public safety. When ~~convicted~~ ~~sex offenders~~ Designated Offenders reenter society, they are much more likely than any other type of offender to be rearrested ~~for a new rape or sexual assault.~~ Given the high rate of recidivism for ~~sexual offenders~~ Designated Offenders and that reducing opportunity and temptation is important to

minimizing the risk of reoffense, there is a need to protect children where they congregate or play in public places, in addition to the protections afforded by state law, near schools, day-care centers and other places children frequent. The City finds and declares that in addition to schools and day-care centers, ~~and public parks~~; children congregate or play at public parks and other Child Safe Locations as defined hereunder. ~~at movie theaters, swimming pools, athletic fields, libraries and recreational clubs and academies~~.

E. The Common Council notes that § 62.11(5), Wis. Stats., authorizes the Common Council to have power to act for the government and good order of the City, for its commercial benefit and for the health, safety and welfare of the public, and may carry out its powers by license, regulation and other necessary or convenient means.

F. This section will not apply to sexually violent persons, as defined in § 980.01(7), Wis. Stats., because these persons are controlled under the regulations of § 980, Wis. Stats.

§ 501-2. Definitions.

As used in this chapter, and unless the context otherwise requires, the following terms shall have the meanings indicated:

~~**CRIME AGAINST CHILDREN**~~

~~Any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or the federal government, having like elements necessary for the conviction, respectively:~~

~~A. Section 940.225(1), First Degree Sexual Assault;~~

~~B. Section 940.225(2), Second Degree Sexual Assault;~~

~~C. Section 940.225(3), Third Degree Sexual Assault;~~

~~D. Section 940.22(2), Sexual Exploitation by Therapist;~~

~~E. Section 940.30, False Imprisonment; victim was minor and not the offender's child;~~

~~F. Section 940.31, Kidnapping; victim was minor and not the offender's child;~~

~~G. Section 944.01, Rape (prior statute);~~

~~H. Section 944.06, Incest;~~

~~I. Section 944.10, Sexual Intercourse with a Child (prior statute);~~

~~J. Section 944.11, Indecent Behavior with a Child (prior statute);~~

~~K. Section 944.12, Enticing Child for Immoral Purposes (prior statute);~~

~~L. Section 948.02(1), First Degree Sexual Assault of a Child;~~

~~M. Section 948.02(2), Second Degree Sexual Assault of a Child;~~

~~N. Section 948.05, Sexual Exploitation of a Child;~~

~~O. Section 948.055, Causing a Child to View or Listen to Sexual Activity;~~

~~P. Section 948.06, Incest with a Child;~~

~~Q. Section 948.07, Child Enticement;~~

~~R. Section 948.08, Soliciting a Child for Prostitution;~~

~~S. Section 948.095, Sexual Assault of a Child by School Staff Person or a Person who Works or Volunteers with Children;~~

~~T. Section 948.11(2)(a) or (am), Exposing Child to Harmful Material; felony sections;~~

~~U. Section 948.12, Possession of Child Pornography;~~

~~V. Section 948.13, Convicted Child Sex Offender Working with Children;~~

~~W. Section 948.30, Abduction of Another's Child;~~

~~X. Section 971.17, Not Guilty by Reason of Mental Disease of an included offense; and~~

~~Y. Section 975.06, Sex Crimes Law Commitment.~~

~~**PERSON**~~

~~A person who has been convicted of or has been found delinquent of or has been found not guilty by reason of disease or mental defect of a sexually violent offense and/or crime against children.~~

~~**RESIDENCE**~~

~~The place where a person sleeps, which may include more than one location, and may be mobile or transitory.~~

~~**SEXUALLY VIOLENT OFFENSE**~~

~~Shall have the meaning as set forth in § 980.01(6), Wis. Stats., as amended from time to time.~~

A. CHILD

A person who is less than 18 years of age.

B. CHILD SAFETY LOCATION

The site upon which any of the following are located:

(1) A public park, parkway, parkland, park facility;

(2) Reedsburg Recreation Center;

(3) The Reedsburg Boys and Girls Club;

(4) A public library;

(5) A recreational trail;

(6) A public playground;

(7) A school for children;

(8) Athletic fields used by children;

(9) A day-care center;

(10) A tutoring facility;

(11) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;

(12) Any facility for children (which means a public or private school or a group home, as defined in § 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats.; a shelter care facility, as defined in § 48.02(17), Wis. Stats.; a foster home, as defined in § 48.02(6), Wis. Stats.; a treatment foster home, as defined in § 48.02(17q), Wis. Stats.; a day-care center licensed under § 48.65, Wis. Stats.; a day-care program established under § 120.13(14), Wis. Stats.; a day-care provider certified under § 48.651, Wis. Stats.; or a youth center, as defined in § 961.01(22), Wis. Stats.); and

(13) For-profit children's play facilities.

(14) Movie Theatre

(15) Public or private golf course or range.

(16) Public swimming pool or other aquatic facilities open to the public.

C. CHILD SAFETY ZONE

Any place within the City that is physically located within 1250 feet of any Child Safety Location.

D. DESIGNATED OFFENDER

Any person who is required to register under § 301.45, Wis. Stats., for any sexual

offense against a child or any person who is required to register under § 301.45, Wis. Stats., and who has been designated special bulletin notification (SBN) Designated Offender pursuant to § 301.46(2) and (2m), Wis. Stats. (Hereinafter referred to as "Designated Offender"/"offender").

E. MINOR
A person under the age of 17.

F. PERMANENT RESIDENCE
A place where a person sleeps, abides, lodges, or resides for 14 or more consecutive days.

G. TEMPORARY RESIDENCE
A place where a person sleeps, abides, lodges, or resides which may include more than one location, and may be mobile or transitory for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or place where the person routinely sleeps, abides, lodges, or resides for a period of 14 or more consecutive or nonconsecutive days in any month and which is not the person's Permanent Residence.

H. SEXUALLY VIOLENT OFFENSE
Shall have the meaning as set forth in § 980.01(6), Wis. Stats., as amended from time to time.

§ 501-3. Residency restrictions.

~~A. A person shall not reside within 1,500 feet of the real property comprising any of the following:~~

~~(1) Any facility for children [which means a public or private school; a group home, as defined in § 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats.; a shelter care facility, as defined in § 48.02(17), Wis. Stats.; a day-care center licensed under § 48.65, Wis. Stats.; a day-care program established under § 120.13(14), Wis. Stats.; a day-care provider certified under § 48.651, Wis. Stats., or a youth center, as defined in § 961.01(22), Wis. Stats.]; and/or~~

~~(2) Any facility used for:~~

~~(a) A public park, parkway, parkland, park facility;~~

~~(b) A public library;~~

~~(c) A recreational trail;~~

~~(d) A public playground;~~

~~(e) A school for children;~~

~~(f) Athletic fields used by children;~~

~~(g) A movie theater;~~

~~(h) A day-care center;~~

~~(i) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;~~

~~(j) A public or private golf course or range; and~~

~~(k) Public swimming pool or other aquatic facilities open to the public.~~

~~B. The distance shall be measured from the closest boundary line of the real property supporting the residence of a person to the closest real property boundary line of the applicable, above-enumerated use(s). A map depicting the above-enumerated uses and the resulting residency restriction distances, as amended from time to time, is on file in the Office of the City Clerk-Treasurer for public inspection.~~

A. Child Safety Zone restriction. Subject to the definitions in **§ 501-2** above, and the exceptions set forth in **§ 501-4** below, it is unlawful for a Designated Offender to establish a Permanent Residence or a Temporary Residence within a Child Safety Zone or any other place designated by the City as a place where children are known to congregate.

B. Measurement of distance. For purposes of determining the minimum distance separation, the restriction shall be measured by following a straight line from the closest outer property line of the Permanent Residence or Temporary Residence to the nearest Child Safety Location of a school, licensed daycare center, park, trail, playground, place of worship or any other place designated by the City where children are known to congregate. The City Clerk shall maintain an official map showing prohibited locations as defined by this section. The Clerk shall update the map at least annually to reflect any changes in the location of prohibited zones. These shall be designated on the map as Child Safety Zones.

§ 501-4. Residency restriction exceptions.

A ~~person~~ Designated Offender residing within ~~1,500 feet of the real property comprising any of the uses enumerated in § 501-3 above~~ any Child Safety Zone does not commit a violation of this ~~chapter~~ section if any of the following apply:

A. ~~The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.~~ The person established the Permanent Residence or Temporary Residence and reported and registered the residence pursuant to § 301.45, Wis. Stats. before December 20, 2007, the original effective date of this Chapter.

B. ~~The person has established a residence prior to the effective date of this chapter on December 20, 2007, which is within 1,500 feet of any of the uses enumerated in **§ 501-3** above, or such enumerated use is newly established after such effective date and it is located within such 1,000 feet of a residence of a person which was established prior to the effective date of this chapter.~~ The person is a minor and is not

required to register under § 301.45 or § 301.46, Wis. Stats.

C. ~~The person is a minor or ward under guardianship.~~ The school, licensed daycare center, park, trail, playground, place of worship or any other place designated by the City as a place where children are known to congregate within 1250 feet of the person's permanent or Temporary Residence was opened after the person established the Permanent Residence or Temporary Residence and registered the residence pursuant to Wis. Stats. § 301.45.

D. The Designated Offender's residence is within a jail, prison, juvenile facility or correctional facility at which the Designated Offender is serving a court-ordered sentence.

E. Any Designated Offender maintaining a residence within the City of Reedsburg that is exempted from the restrictions of this ordinance pursuant to Section § 501-4 shall lose the exemption if the Designated Offender's ownership or leasehold of the property ceases at any point in time, at which time the Designated Offender shall be subject to the restrictions of Section § 501-3.

F. Any Designated Offender maintaining a residence within the City of Reedsburg who ceases to maintain a Permanent or Temporary Residence within the City shall be subject to the terms of Section § 501-3.

§ 501-5. Original domicile restriction.

In addition to and notwithstanding the foregoing, but subject to **§ 501-4** above, no person and no individual who is a Designated Offender may establish a residence in the City of Reedsburg, unless such person was domiciled in the City of Reedsburg at the time of the offense resulting in the person's designation as a Designated Offender. ~~person and no individual who has been convicted of a sexually violent offense and/or a crime against children shall be permitted to reside in the City of Reedsburg, unless such person was domiciled in the City of Reedsburg at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense and/or crime against children.~~

~~Except as described in Section § 501-4 above, no Designated Offender may establish a residence in the City of Reedsburg unless he or she was a resident of the City of Reedsburg at the time of the most recent offense resulting in the person's designation as a Designated Offender.~~ This restriction does not apply if ten (10) or more years have passed since the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release and the Designated Offender has not been convicted of any additional offense resulting in person meeting the Designated Offender definition herein. ~~for the sex offense provided the Designated Offender has not been convicted of an additional offense meeting the definition of Designated Offender herein.~~

~~**§ 501-6. Child safety zones.**~~

~~A. No person shall enter or be present upon any real property upon which there exists any facility used for or which supports a use of:~~

~~(1) A public park, parkway, parkland, park facility;~~

~~(2) A public library;~~

~~(3) A recreational trail;~~

~~(4) A public playground;~~

~~(5) A school for children;~~

~~(6) Athletic fields used by children;~~

~~(7) A movie theater;~~

~~(8) A day-care center;~~

~~(9) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;~~

~~(10) A public or private golf course or range;~~

~~(11) Public swimming pool or other aquatic facilities open to the public; and~~

~~(12) Any facility for children [which means a public or private school; a group home, as defined in § 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats.; a shelter care facility, as defined in § 48.02(17), Wis. Stats.; a day-care center licensed under § 48.65, Wis. Stats.; a day care program established under § 120.13(14), Wis. Stats.; a day care provider certified under § 48.651, Wis. Stats., or a youth center, as defined in § 961.01(22), Wis. Stats.].~~

~~B. A map depicting the above-enumerated uses and the resulting residency restriction distances, as amended from time to time, is on file in the office of the City Clerk-Treasurer for public inspection.~~

§ 501-6 ~~Child safety zone exceptions.~~ Renting real property.

~~A person does not commit a violation of § **501-6** above and the enumerated uses may allow such person on the property supporting such use if any of the following apply:~~

~~A. The property supporting an enumerated use under § **501-6** also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:~~

~~(1) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and~~

~~(2) Written advance notice is made from the person to an individual in charge of the church and approval from an individual in charge of the church as designated by the church is made in return of the attendance by the person; and~~

~~(3) The person shall not participate in any religious education programs which include individuals under the age of 18.~~

~~B. The property supporting an enumerated use under § **501-6** also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person as the child's parent upon the property, subject to the following conditions:~~

~~(1) Entrance and presence upon the property occurs only during the hours of activity related to the use as posted to the public; and~~

~~(2) Written advance notice is made from the person to an individual in charge of the use upon the property and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return of the attendance by the person.~~

~~C. The property supporting an enumerated use under § **501-6** also supports a polling location in a local, state or federal election, subject to the following conditions:~~

~~(1) The person is eligible to vote;~~

~~(2) The designated polling place for the person is an enumerated use; and~~

~~(3) The person enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate; and the person vacates the property immediately after voting.~~

~~D. The property supporting an enumerated use under § **501-6** also supports an elementary or secondary school lawfully attended by a person as a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.~~

A. No person shall let or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that it will be used as a permanent or Temporary Residence by a person prohibited from establishing such permanent or Temporary Residence pursuant to this section if such place, structure or part thereof, or trailer or other locale is located within a prohibited Child Safety Zone as described herein.

B. Notice to property owner. A Designated Offender shall notify any property owner from whom the Designated Offender intends to lease, or rent any place, structure, mobile home, trailer, or any part thereof, that the Designated Offender is a Designated Offender as defined in paragraph 2(a) of this Section, prior to entering into any lease or rental agreement.

C. Notice to Police Department. A Designated Offender and any property owner who leases or rents any place, structure, mobile home, trailer, or any part thereof, with the knowledge that it will be used as a Permanent or Temporary Residence by a Designated Offender, must each notify the Reedsburg Police Department in writing a minimum of fourteen (14) days prior to entering into a lease or rental agreement

establishing a Permanent or Temporary Residence within the City. Any property owner governed by this paragraph shall also provide notice to the Reedsburg Police Department upon termination of the Designated Offender's tenancy for any reason whatsoever.

§ 501-7 ~~Enforcement; violations and penalties.~~ Holiday events and public gatherings:

~~If any person violates § **501-2** above by establishing a residence within 1,500 feet of those premises as described herein, without any exception(s) as also set forth above, the City Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police that upon all of the facts and circumstances and the purpose of this chapter, such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or other, shall bring an action in the name of the City in the Circuit Court for Sauk County to permanently enjoin such residency as a public nuisance. If a person violates § **501-6** above, in addition to the aforesaid injunctive relief, such person shall be subject to forfeiture of not less than $25 nor more than $250 for each offense. Each day a violation continues shall constitute a separate offense. In addition, the City may undertake all other legal and equitable remedies to prevent or remove a violation of this chapter.~~

A. It is unlawful for a Designated Offender to actively take part in any public holiday event involving children where the distributing of candy or other items to children takes place, including but not limited to holiday parades or similar gatherings, Halloween trick-or-treating, wearing a seasonable costume in a public place, or wearing any other costume reasonably expected to attract children in a public place, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a Designated Offender.

B. Exception. This section does not apply to any event in which the Designated Offender is the parent or guardian of the child(ren) involved, and the Designated Offender's child(ren) are the only child(ren) present.

§ 501-8. Loitering.

A. It shall be unlawful for any Designated Offender as defined in § 501-2 above, to loiter or prowl within 1,250 feet of any school or school property, recreational trail, playground or park, any specialized school for children, including, but not limited to, gymnastics academy, martial arts academy, dance academy, music school, public beach or public library in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of children in the vicinity.

B. Unless flight by an actor or other circumstances makes it impractical, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by law enforcement at the time, would have dispelled the alarm.

C. An offender does not commit a violation of loitering in a Child Safety Zone as stated above, and the enumerated uses may allow such person on the property supporting such use, if any of the following apply:

(1) The property supporting an enumerated use also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:

(a) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and

(b) Written advance notice is made from the person to an individual in charge of the church, and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the person; and

(c) The person shall not participate in any religious education programs, which include individuals under the age of 18.

(2) The property supporting an enumerated use also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person as the child's parent upon the property, subject to the following conditions:

(a) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and

(b) Written advance notice of not less than seven (7) days is made from the person to an individual in charge of the use of the property, and written approval from an authorized individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the person.

(3) The property supporting an enumerated use also supports a polling location in a local, state or federal election, subject to the following conditions:

(a) The person is eligible to vote; and

(b) The designated polling place for the person is an enumerated use; and

(c) The person enters the polling place property and proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate, and the person vacates the property immediately after voting; and

(d) The property supporting an enumerated use also supports an elementary or secondary school lawfully attended by a person as a student, under which circumstances the person who is a student may

enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.

§ 501-9. Child Safety Zone map.

The City Clerk's Office shall maintain an official map showing the Child Safety Zones within the City. The City Clerk's Office shall update the map at least annually to reflect any changes in the location of Child Safety Zones. The map is to be displayed in the office of the City Clerk. In the event of a conflict, the terms of this section shall control. In no event shall a failure to update the map in compliance with this section preclude the persecution or conviction of any Designated Offender under this section.

§ 501-10. Violations and penalties.

If a person violates Chapter 501, by establishing a residence or occupying residential premises within 1250 feet of those premises as described therein, without any exception(s) as also set forth above, the City Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police that upon all of the facts and circumstances and the purpose of this section such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health or safety of another or others, shall bring an action in the name of the City in the Circuit Court for Sauk County to permanently enjoin such residency as a public nuisance. If a person violates Chapter 501, in addition to the aforesaid injunctive relief, such person shall be subject to the general penalty provisions set forth under §§ 1-3 of this Code of the City of Reedsburg. Each day a violation continues shall constitute a separate offense. In addition, the City may undertake all other legal and equitable remedies to prevent or remove a violation of this section.

§ 501-11. Designated Offender Residency Appeal Board.

(A.) The above requirements of this section may be waived upon approval of the Designated Offender Residency Appeal Board through an appeal made by the affected party. Such appeal shall be made in writing to the City Clerk's office, who shall forward the request to the Designated Offender Residency Appeal Board, which shall receive reports from the Police Department as to the criminal background of the applicant and the nature and circumstances of the underlying offense requiring the registration under § 301.45 or § 301.46, Wis. Stats. The Board shall convene and shall hear from the applicant, as well as the Police Department or others who would be affected by this decision. The Board shall consider the amount of time which has passed since the original offense was committed; whether there has been evidence of any re-offense; whether the applicant is employed and the duration of that employment; whether the applicant has shown remorse; whether there has been evidence of rehabilitation; and finally, any factors that would suggest a likelihood of re-offense.

(B.) The Designated Offender Residency Appeal Board shall consist of five (5) City residents appointed by the Mayor of the City and ratified by the Common Council. The members of the Designated Offender Residency Appeal Board shall serve in staggered, three-year terms with the initial Board having two members with three-year terms; two members with two-year terms; and a single member with a one-year term. The Chief of Police will act as a resource to the Appeals Board and will attend its meetings.

SECTION III: VALIDITY:

Should any section, clause or provision of the ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

SECTION IV: CONFLICTING PROVISIONS REPEALED:

All ordinances in conflict with any provision of this Ordinance are hereby repealed.

SECTION V: EFFECTIVE DATE:

This Ordinance shall be in force from and after its introduction and publication as provided by statute.

SECTION VI.

This ordinance becomes part of City of Reedsburg Code Chapter 501.

_____ _____

David G. Estes, Mayor Jacob Crosetto, City Clerk-Treasurer

INTRODUCED: _____
PUBLISHED: _____
PASSED: _____

McKune v. Lile

Supreme Court of the United States

November 28, 2001, Argued ; June 10, 2002, Decided

No. 00-1187

Reporter
536 U.S. 24 *; 122 S. Ct. 2017 **; 153 L. Ed. 2d 47 ***; 2002 U.S. LEXIS 4206 ****; 70 U.S.L.W. 4502; 2002 Cal. Daily Op. Service 5037; 15 Fla. L. Weekly Fed. S 333

DAVID R. MCKUNE, WARDEN, ET AL., PETITIONERS v. ROBERT G. LILE

Prior History: [**1]** ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

Lile v. McKune, 224 F.3d 1175, 2000 U.S. App. LEXIS 22476 (10th Cir. Kan. 2000)

Disposition: Reversed and remanded.

Syllabus

Respondent was convicted of rape and related crimes. A few years before his scheduled release, prison officials ordered respondent to participate in a Sexual Abuse Treatment Program (SATP). As part of the program, participating inmates are required to complete and sign an "Admission of Responsibility" form, in which they accept responsibility for the crimes for which they have been sentenced, and complete a sexual history form detailing all prior sexual activities, regardless of whether the activities constitute uncharged criminal offenses. The information obtained from SATP participants is not privileged, and might be used **[****2]** against them in future criminal proceedings. There is no evidence, however, that incriminating information has ever been disclosed under the SATP. Officials informed respondent that if he refused to participate in the SATP, his prison privileges would be reduced, resulting in the automatic curtailment of his visitation rights, earnings, work opportunities, ability to send money to family, canteen expenditures, access to a personal television, and other privileges. He also would be transferred to a potentially more dangerous maximum-security unit. Respondent refused to participate in the SATP on the ground that the required disclosures of his criminal history would violate his Fifth Amendment privilege against compelled self-incrimination. He brought this action for injunctive relief under 42 U.S.C. § 1983. The District Court granted him summary judgment. Affirming, the Tenth Circuit held that the compelled self-incrimination prohibited by the Fifth Amendment can be established by penalties that do not constitute deprivations of protected liberty interests under the Due Process Clause; ruled that the automatic reduction in respondent's prison privileges and housing **[****3]** accommodations was such a penalty because of its substantial impact on him; declared that respondent's information would be sufficiently incriminating because an admission of culpability regarding his crime of conviction would create a risk of a perjury prosecution; and concluded that, although the SATP served Kansas' important interests in rehabilitating sex offenders and promoting public safety, those interests could be served without violating the Constitution by treating inmate admissions as privileged or by granting inmates use immunity.

Held: The judgment is reversed, and the case is remanded.

224 F.3d 1175, reversed and remanded.

JUSTICE KENNEDY, joined by THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS, concluded that the SATP serves a vital penological purpose, and that offering inmates minimal incentives to participate does not amount to compelled self-incrimination prohibited by the Fifth Amendment. Pp. 4-21.

(a) The SATP is supported by the legitimate penological objective of rehabilitation. The SATP lasts 18 months; involves substantial daily counseling; and helps inmates address sexual addiction, understand the thoughts, feelings, **[****4]** and behavior dynamics that precede their offenses, and develop relapse prevention skills. Pp. 4-7.

(b) The mere fact that Kansas does not offer legal immunity from prosecution based on statements made in the course of the SATP does not render the program invalid. No inmate has ever been charged or prosecuted

for any offense based on such information, and there is no contention that the program is a mere subterfuge for the conduct of a criminal investigation. Rather, the refusal to offer use immunity serves two legitimate state interests: (1) The potential for additional punishment reinforces the gravity of the participants' offenses and thereby aids in their rehabilitation; and (2) the State confirms its valid interest in deterrence by keeping open the option to prosecute a particularly dangerous sex offender. Pp. 4-8.

(c) The SATP, and the consequences for nonparticipation in it, do not combine to create a compulsion that encumbers the constitutional right not to incriminate oneself. Pp. 8-20.

(1) The prison context is important in weighing respondent's constitutional claim: A broad range of choices that might infringe constitutional rights in free society fall within **[****5]** the expected conditions of confinement of those lawfully convicted. The limitation on prisoners' privileges and rights also follows from the need to grant necessary authority and capacity to officials to administer the prisons. See, *e.g., Turner* v. *Safley,* 482 U.S. 78, 96 L. Ed. 2d 64, 107 S. Ct. 2254. The Court's holding in *Sandin* v. *Conner,* 515 U.S. 472, 484, 132 L. Ed. 2d 418, 115 S. Ct. 2293, that challenged prison conditions cannot give rise to a due process violation unless they constitute "atypical and significant hardships on [inmates] in relation to the ordinary incidents of prison life," may not provide a precise parallel for determining whether there is compelled self-incrimination, but does provide useful instruction. A prison clinical rehabilitation program, which is acknowledged to bear a rational relation to a legitimate penological objective, does not violate the privilege against compelled self-incrimination if the adverse consequences an inmate faces for not participating are related to the program objectives and do not constitute atypical and significant hardships in relation to the ordinary incidents of prison life. Cf., *e.g., Baxter* v. *Palmigiano,* 425 U.S. 308, 319-320, 47 L. Ed. 2d 810, 96 S. Ct. 1551. **[****6]** Pp. 8-11.

(2) Respondent's decision not to participate in the SATP did not extend his prison term or affect his eligibility for good-time credits or parole. He instead complains about his possible transfer from the medium-security unit where the program is conducted to a less desirable maximum-security unit. The transfer, however, is not intended to punish prisoners for exercising their Fifth Amendment rights. Rather, it is incidental to a legitimate penological reason: Due to limited space, inmates who do not participate in their respective programs must be moved out of the facility where the programs are held to make room for other inmates. The decision where to house inmates is at the core of prison administrators' expertise. See *Meachum* v. *Fano,* 427 U.S. 215, 225, 49 L. Ed. 2d 451, 96 S. Ct. 2532. Respondent also complains that his privileges will be reduced. An essential tool of prison administration, however, is the authority to offer inmates various incentives to behave. The Constitution accords prison officials wide latitude to bestow or revoke these perquisites as they see fit. See *Hewitt* v. *Helms,* 459 U.S. 460, 467, 74 L. Ed. 2d 675, 103 S. Ct. 864, n. 4. Respondent fails to cite a single case **[****7]** from this Court holding that the denial of discrete prison privileges for refusal to participate in a rehabilitation program amounts to unconstitutional compulsion. Instead, he relies on the so-called penalty cases, see, *e.g., Spevack* v. *Klein,* 385 U.S. 511, 17 L. Ed. 2d 574, 87 S. Ct. 625, which involved free citizens given the choice between invoking the Fifth Amendment privilege and sustaining their economic livelihood, see, *e.g., id.,* at 516. Those cases did not involve legitimate rehabilitative programs conducted within prison walls, and they are not easily extended to the prison context, where inmates surrender their rights to pursue a livelihood and to contract freely with the State. Pp. 11-13.

(3) Determining what constitutes unconstitutional compulsion involves a question of judgment: Courts must decide whether the consequences of an inmate's choice to remain silent are closer to the physical torture against which the Constitution clearly protects or the *de minimis* harms against which it does not. The *Sandin* framework provides a reasonable means of assessing whether the response of prison administrators to correctional and rehabilitative necessities are so **[****8]** out of the ordinary that one could sensibly say they rise to the level of unconstitutional compulsion. Pp. 13-14.

(d) Prison context or not, respondent's choice is marked less by compulsion than by choices the Court has held give no rise to a self-incrimination claim. The cost to respondent of exercising his Fifth Amendment privilege -- denial of certain perquisites that make his life in prison more tolerable -- is much less than that borne by the defendant in, *e.g., McGautha* v. *California,* 402 U.S. 183, 217, 28 L. Ed. 2d 711, 91 S. Ct. 1454, 58 Ohio Op. 2d 243, where the Court upheld a procedure that allowed statements made by a criminal defendant to mitigate his responsibility and avoid the death penalty to be used against him as evidence of his guilt. The hard choices faced by the defendants in, *e.g., Baxter* v.

Palmigiano, supra, at 313; *Ohio Adult Parole Authority* v. *Woodard,* 523 U.S. 272, 287-288, 140 L. Ed. 2d 387, 118 S. Ct. 1244; and *Minnesota* v. *Murphy,* 465 U.S. 420, 422, 79 L. Ed. 2d 409, 104 S. Ct. 1136, further illustrate that the consequences respondent faced did not amount to unconstitutional compulsion. Respondent's attempt to distinguish the latter cases on dual grounds -- that (1) the penalty here followed **[****9]** automatically from his decision to remain silent, and (2) his participation in the SATP was involuntary -- is unavailing. Neither distinction would justify departing from this Court's precedents. Pp. 14-17.

(e) Were respondent's position to prevail, there would be serious doubt about the constitutionality of the federal sex offender treatment program, which is comparable to the Kansas program. Respondent is mistaken as well to concentrate on a so-called reward/penalty distinction and an illusory baseline against which a change in prison conditions must be measured. Finally, respondent's analysis would call into question the constitutionality of an accepted feature of federal criminal law, the downward adjustment of a sentence for acceptance of criminal responsibility. Pp. 17-20.

JUSTICE O'CONNOR acknowledged that the Court is divided on the appropriate standard for evaluating compulsion for purposes of the Fifth Amendment privilege against self-incrimination in a prison setting, but concluded that she need not resolve this dilemma because this case indisputably involves burdens rather than benefits, and because the penalties assessed against respondent as a result of his **[****10]** failure to participate in the Sexual Abuse Treatment Program (SATP) are not compulsive on any reasonable test. The Fifth Amendment's text does not prohibit all penalties levied in response to a person's refusal to incriminate himself or herself -- it prohibits only the compulsion of such testimony. The Court's so-called "penalty cases" establish that the potential loss of one's livelihood through, *e.g.,* the loss of employment, *Uniformed Sanitation Men Assn., Inc.* v. *Commissioner of Sanitation of City of New York,* 392 U.S. 280, 20 L. Ed. 2d 1089, 88 S. Ct. 1917 and the loss of the right to participate in political associations and to hold public office, *Lefkowitz* v. *Cunningham,* 431 U.S. 801, 53 L. Ed. 2d 1, 97 S. Ct. 2132, are capable of coercing incriminating testimony. Such penalties, however, are far more significant that those facing respondent: a reduction in incentive level and a corresponding transfer from medium to maximum security. In practical terms, these changes involve restrictions on respondent's prison privileges and living conditions that seem minor. Because the prison is responsible for caring for respondent's basic needs, his ability to support himself is not implicated by the reduction **[****11]** of his prison wages. While his visitation is reduced, he still retains the ability to see his attorney, his family, and clergy. The limitation on his possession of personal items, as well as the amount he is allowed to spend at the canteen, may make his prison experience more unpleasant, but seems very unlikely to actually compel him to incriminate himself. Because it is his burden to prove compulsion, it may be assumed that the prison is capable of controlling its inmates so that respondent's personal safety is not jeopardized by being placed in maximum security, at least in the absence of proof to the contrary. Finally, the mere fact that the penalties facing respondent are the same as those imposed for prison disciplinary violations does not make them coercive. Thus, although the plurality's failure to set forth a comprehensive theory of the Fifth Amendment privilege against self-incrimination is troubling, its determination that the decision below should be reversed is correct. Pp. 1-7.

Counsel: Stephen R. McAllister, for petitioners.

Gregory G. Garre, Washington, DC, for United States as amicus curiae, by special leave of the Court, supporting the petitioners.

Matthew J. Wilttanger, Overland Park, KS, for respondent.

Judges: KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment. **[****12]** STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined.

Opinion by: KENNEDY

Opinion

[2022] [***54] [*29]** JUSTICE **KENNEDY** announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, JUSTICE **SCALIA**, and JUSTICE **THOMAS** join.

[1A]Respondent Robert G. Lile is a convicted sex offender in the custody of the Kansas Department of

Corrections (Department). A few years before respondent was scheduled to reenter society, Department officials recommended that he enter a prison treatment program so that he would not rape again upon release. While there appears to be some difference of opinion among experts in the field Kansas officials and officials who administer the United States prison system have made the determination that it is of considerable importance for the program participant to admit having committed the crime for which he is being treated and other past offenses. The first and in many ways most crucial step in the Kansas rehabilitation program thus requires the participant to confront his past crimes so that he can begin to understand his own motivations and weaknesses. As this initial step can be a most difficult one, Kansas offers sex offenders incentives **[****13]** to participate in the program.

[1B] [2A]Respondent contends this incentive system violates his Fifth Amendment privilege against self-incrimination. Kansas' rehabilitation program, however, serves a vital penological purpose, and offering inmates minimal incentives to participate does not amount to compelled self-incrimination prohibited by the Fifth Amendment.

I

In 1982, respondent lured a high school student into his car as she was returning home from school. At **[***55]** gunpoint, respondent forced the victim to perform oral sodomy on him **[*30]** and then drove to a field where he raped her. After the sexual assault, the victim went to her school, where, crying and upset, she reported the crime. The police arrested respondent **[**2023]** and recovered on his person the weapon he used to facilitate the crime. *State* v. *Lile,* 237 Kan. 210, 211-212, 699 P.2d 456, 457-458 (1985). Although respondent maintained that the sexual intercourse was consensual, a jury convicted him of rape, aggravated sodomy, and aggravated kidnaping. Both the Kansas Supreme Court and a Federal District Court concluded that the evidence was sufficient to sustain respondent's conviction on all charges. See *id.,* at 211, 699 P.2d at 458; **[****14]** 45 F. Supp. 2d 1157, 1161 (Kan. 1999).

In 1994, a few years before respondent was scheduled to be released, prison officials ordered him to participate in a Sexual Abuse Treatment Program (SATP). As part of the program, participating inmates are required to complete and sign an "Admission of Responsibility" form, in which they discuss and accept responsibility for the crime for which they have been sentenced. Participating inmates also are required to complete a sexual history form, which details all prior sexual activities, regardless of whether such activities constitute uncharged criminal offenses. A polygraph examination is used to verify the accuracy and completeness of the offender's sexual history.

While information obtained from participants advances the SATP's rehabilitative goals, the information is not privileged. Kansas leaves open the possibility that new evidence might be used against sex offenders in future criminal proceedings. In addition, Kansas law requires the SATP staff to report any uncharged sexual offenses involving minors to law enforcement authorities. Although there is no evidence that incriminating information has ever been disclosed under **[****15]** the SATP, the release of information is a possibility.

Department officials informed respondent that if he refused to participate in the SATP, his privilege status would be reduced from Level III to Level I. As part of this reduction, **[*31]** respondent's visitation rights, earnings, work opportunities, ability to send money to family, canteen expenditures, access to a personal television, and other privileges automatically would be curtailed. In addition, respondent would be transferred to a maximum-security unit, where his movement would be more limited, he would be moved from a two-person to a four-person cell, and he would be in a potentially more dangerous environment.

Respondent refused to participate in the SATP on the ground that the required disclosures of his criminal history would violate his Fifth Amendment privilege against self-incrimination. He brought this action under 42 U.S.C. § 1983 against the warden and the secretary of the Department, seeking an injunction to prevent them from withdrawing his prison privileges and transferring him to a different housing unit.

After the parties completed discovery, the United States District Court for the District **[****16]** of Kansas entered summary judgment in respondent's favor. 24 F. Supp. 2d 1152 (1998). The District Court noted that because respondent **[***56]** had testified at trial that his sexual intercourse with the victim was consensual, an acknowledgement of responsibility for the rape on the "Admission of Guilt" form would subject respondent to a possible charge of perjury. *Id.*, 1157. After reviewing the specific loss of privileges and change in conditions of confinement that respondent would face for refusing to incriminate himself, the District Court concluded that these consequences constituted coercion in violation of

the Fifth Amendment.

The Court of Appeals for the Tenth Circuit affirmed. 224 F.3d 1175 (2000). It held that the compulsion element of a Fifth Amendment claim can be established by penalties that do not constitute deprivations of protected liberty interests under the Due Process Clause. *Id.*, at 1183. It held that the reduction in prison privileges and housing accommodations was a penalty, both because of its substantial impact **[*32]** on the inmate and because that impact was identical to the punishment imposed **[**2024]** by the Department **[****17]** for serious disciplinary infractions. In the Court of Appeals' view, the fact that the sanction was automatic, rather than conditional, supported the conclusion that it constituted compulsion. Moreover, because all SATP files are subject to disclosure by subpoena, and an admission of culpability regarding the crime of conviction would create a risk of a perjury prosecution, the court concluded that the information disclosed by respondent was sufficiently incriminating. *Id.*, at 1180. The Court of Appeals recognized that the Kansas policy served the State's important interests in rehabilitating sex offenders and promoting public safety. It concluded, however, that those interests could be served without violating the Constitution, either by treating the admissions of the inmates as privileged communications or by granting inmates use immunity. *Id.*, at 1192.

We granted the warden's petition for certiorari because the Court of Appeals has held that an important Kansas prison regulation violates the Federal Constitution.532 U.S. 1018, 149 L. Ed. 2d 752, 121 S. Ct. 1955 (2001).

II

Sex offenders are a serious threat in this Nation. In 1995, an estimated 355,000 rapes and sexual **[****18]** assaults occurred nationwide. U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 1 (1997) (hereinafter Sex Offenses); U.S. Dept. of Justice, Federal Bureau of Investigation, Crime in the United States, 1999, Uniform Crime Reports 24 (2000). Between 1980 and 1994, the population of imprisoned sex offenders increased at a faster rate than for any other category of violent crime. See Sex Offenses 18. As in the present case, the victims of sexual assault are most often juveniles. In 1995, for instance, a majority of reported forcible sexual offenses were committed against persons under 18 years of age. University of New Hampshire Crimes Against Children Research Center, Fact Sheet 5; Sex Offenses 24. Nearly 4 in 10 imprisoned violent **[*33]** sex offenders said their victims were 12 or younger. *Id.,* at *iii*.

When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See Sex Offenses 27; U.S. Dept. of Justice, Bureau of **[***57]** Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997). States thus have a vital interest in rehabilitating convicted sex offenders.

[**19]** Therapists and correctional officers widely agree that clinical rehabilitative programs can enable sex offenders to manage their impulses and in this way reduce recidivism. See U.S. Dept. of Justice, Nat. Institute of Corrections, A Practitioner's Guide to Treating the Incarcerated Male Sex Offender xiii (1988) ("The rate of recidivism of treated sex offenders is fairly consistently estimated to be around 15%," whereas the rate of recidivism of untreated offenders has been estimated to be as high as 80%. "Even if both of these figures are exaggerated, there would still be a significant difference between treated and untreated individuals"). An important component of those rehabilitation programs requires participants to confront their past and accept responsibility for their misconduct. *Id.,* at 73. "Denial is generally regarded as a main impediment to successful therapy," and "therapists depend on offenders' truthful descriptions of events leading to past offences in order to determine which behaviors need to be targeted in therapy." H. Barbaree, Denial and Minimization Among Sex Offenders: Assessment and Treatment Outcome, 3 Forum on Corrections Research, No. 4, p. 30 (1991). **[****20]** Research indicates that offenders who deny all allegations of sexual abuse are three times more likely to fail in treatment than those who admit even partial complicity. See B. Maletzky & K. McGovern, Treating the Sexual Offender 253-255 (1991).

[2025]** The critical first step in the Kansas Sexual Abuse Treatment Program (SATP), therefore, is acceptance of responsibility for past offenses. This gives inmates a basis to understand why they are being punished **[*34]** and to identify the traits that cause such a frightening and high risk of recidivism. As part of this first step, Kansas requires each SATP participant to complete an "Admission of Responsibility" form, to fill out a sexual history form discussing their offending behavior, and to discuss their past behavior in individual and group counseling sessions.

The District Court found that the Kansas SATP is a valid "clinical rehabilitative program," supported by a

"legitimate penological objective" in rehabilitation. 24 F. Supp. 2d at 1163. The SATP lasts for 18 months and involves substantial daily counseling. It helps inmates address sexual addiction; understand the thoughts, feelings, and behavior dynamics that precede their **[****21]** offenses; and develop relapse prevention skills. Although inmates are assured of a significant level of confidentiality, Kansas does not offer legal immunity from prosecution based on any statements made in the course of the SATP. According to Kansas, however, no inmate has ever been charged or prosecuted for any offense based on information disclosed during treatment. Brief for Petitioners 4-5. There is no contention, then, that the program is a mere subterfuge for the conduct of a criminal investigation.

As the parties explain, Kansas' decision not to offer immunity to every SATP participant serves two legitimate state interests. First, the professionals who design and conduct the program have concluded that for SATP participants to accept full responsibility for their past actions, **[***58]** they must accept the proposition that those actions carry consequences. Tr. of Oral Arg. 11. Although no program participant has ever been prosecuted or penalized based on information revealed during the SATP, the potential for additional punishment reinforces the gravity of the participants' offenses and thereby aids in their rehabilitation. If inmates know society will not punish them for their past **[****22]** offenses, they may be left with the false impression that society does not consider those crimes to be serious ones. The practical effect of guaranteed **[*35]** immunity for SATP participants would be to absolve many sex offenders of any and all cost for their earlier crimes. This is the precise opposite of the rehabilitative objective.

Second, while Kansas as a rule does not prosecute inmates based upon information revealed in the course of the program, the State confirms its valid interest in deterrence by keeping open the option to prosecute a particularly dangerous sex offender. Brief for 18 States as *Amici Curiae* 11. Kansas is not alone in declining to offer blanket use immunity as a condition of participation in a treatment program. The Federal Bureau of Prisons and other States conduct similar sex offender programs and do not offer immunity to the participants. See, *e.g., Ainsworth* v. *Risley,* 244 F.3d 209, 214 (CA1 2001) (describing New Hampshire's program).

[1C]The mere fact that Kansas declines to grant inmates use immunity does not render the SATP invalid. Asking at the outset whether prison administrators can or should offer immunity skips the constitutional **[****23]** inquiry altogether. If the State of Kansas offered immunity, the self-incrimination privilege would not be implicated. See, *e.g., Kastigar* v. *United States,* 406 U.S. 441, 453, 32 L. Ed. 2d 212, 92 S. Ct. 1653 (1972); *Brown* v. *Walker,* 161 U.S. 591, 610, 40 L. Ed. 819, 16 S. Ct. 644 (1896). The State, however, does not offer immunity. So the central question becomes whether the State's program, and the consequences for nonparticipation in it, combine to create a compulsion that encumbers the constitutional right. If there is compulsion, the State cannot continue the program in its present form; and the alternatives, as will be discussed, defeat the program's objectives.

[2026]** The SATP does not compel prisoners to incriminate themselves in violation of the Constitution. The Fifth Amendment Self-Incrimination Clause, which applies to the States via the Fourteenth Amendment, *Malloy* v. *Hogan,* 378 U.S. 1, 12 L. Ed. 2d 653, 84 S. Ct. 1489 (1964), provides that no person "shall be compelled in any criminal case to be a witness against himself." The "Amendment speaks of compulsion," *United States* v. *Monia,* **[*36]** 317 U.S. 424, 427, 87 L. Ed. 376, 63 S. Ct. 409 (1943), and the Court has insisted that the "constitutional guarantee is only that the **[****24]** witness not be *compelled* to give self-incriminating testimony." *United States* v. *Washington,* 431 U.S. 181, 188, 52 L. Ed. 2d 238, 97 S. Ct. 1814 (1977). The consequences in question here -- a transfer to another prison where television sets are not placed in each inmate's cell, where exercise facilities are not readily available, and where work and wage opportunities are more limited -- are not ones that compel a prisoner to speak about his past crimes despite a desire to remain silent. The fact that these consequences are imposed on prisoners, **[***59]** rather than ordinary citizens, moreover, is important in weighing respondent's constitutional claim.

The privilege against self-incrimination does not terminate at the jailhouse door, but the fact of a valid conviction and the ensuing restrictions on liberty are essential to the Fifth Amendment analysis. *Sandin* v. *Conner,* 515 U.S. 472, 485, 132 L. Ed. 2d 418, 115 S. Ct. 2293 (1995) ("Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system" (citation and internal quotation marks omitted)). A broad range of choices that might infringe constitutional **[****25]** rights in free society fall within the expected conditions of

confinement of those who have suffered a lawful conviction.

The Court has instructed that rehabilitation is a legitimate penological interest that must be weighed against the exercise of an inmate's liberty. See, *e.g., O'Lone* v. *Estate of Shabazz,* 482 U.S. 342, 348, 351, 96 L. Ed. 2d 282, 107 S. Ct. 2400 (1987). Since "most offenders will eventually return to society, [a] paramount objective of the corrections system is the rehabilitation of those committed to its custody." *Pell* v. *Procunier,* 417 U.S. 817, 823, 41 L. Ed. 2d 495, 94 S. Ct. 2800, 71 Ohio Op. 2d 195 (1974). Acceptance of responsibility in turn demonstrates that an offender "is ready and willing to admit his crime and to enter the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period **[*37]** of time than might otherwise be necessary." *Brady* v. *United States,* 397 U.S. 742, 753, 25 L. Ed. 2d 747, 90 S. Ct. 1463 (1970).

The limitation on prisoners' privileges and rights also follows from the need to grant necessary authority and capacity to federal and state officials to administer the prisons. See, *e.g., Turner* v. *Safley,* 482 U.S. 78, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987). "Running **[****26]** a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Id.,* at 84-85. To respect these imperatives, courts must exercise restraint in supervising the minutiae of prison life. *Ibid.* Where, as here, a state penal system is involved, federal courts have "additional reason to accord deference to the appropriate prison authorities." *Ibid*.

For these reasons, the Court in *Sandin* held that challenged prison conditions cannot give rise to a due process violation unless those conditions constitute "atypical and significant hardships on [inmates] in relation to the ordinary incidents of prison life." See 515 U.S. at 484. The determination under *Sandin* whether a prisoner's liberty interest has been curtailed may not provide a precise parallel for determining whether there is compelled self-incrimination, but it does **[**2027]** provide useful instruction for answering the latter inquiry. *Sandin* and its counterparts underscore the axiom that a convicted felon's life in prison differs from **[****27]** that of an ordinary citizen. In the context of a legitimate rehabilitation program for prisoners, those same considerations are relevant to our analysis. The compulsion inquiry must consider the significant restraints already inherent in prison life and the **[***60]** State's own vital interests in rehabilitation goals and procedures within the prison system. A prison clinical rehabilitation program, which is acknowledged to bear a rational relation to a legitimate penological objective, does not violate the privilege against self-incrimination if the adverse **[*38]** consequences an inmate faces for not participating are related to the program objectives and do not constitute atypical and significant hardships in relation to the ordinary incidents of prison life.

Along these lines, this Court has recognized that lawful conviction and incarceration necessarily place limitations on the exercise of a defendant's privilege against self-incrimination. See, *e.g., Baxter* v. *Palmigiano,* 425 U.S. 308, 47 L. Ed. 2d 810, 96 S. Ct. 1551(1976). *Baxter* declined to extend to prison disciplinary proceedings the rule of *Griffin* v. *California,* 380 U.S. 609, 14 L. Ed. 2d 106, 85 S. Ct. 1229, 5 Ohio Misc. 127, 32 Ohio Op. 2d 437 (1965), that the prosecution may not comment on **[****28]** a defendant's silence at trial. 425 U.S. at 319-320. As the Court explained, "disciplinary proceedings in state prisons . . . involve the correctional process and important state interests other than conviction for crime." *Id.,* at 319. The inmate in *Baxter* no doubt felt compelled to speak in one sense of the word. The Court, considering the level of compulsion in light of the prison setting and the State's interests in rehabilitation and orderly administration, nevertheless rejected the inmate's self-incrimination claim.

In the present case, respondent's decision not to participate in the Kansas SATP did not extend his term of incarceration. Nor did his decision affect his eligibility for good-time credits or parole. 224 F.3d at 1182. Respondent instead complains that if he remains silent about his past crimes, he will be transferred from the medium-security unit -- where the program is conducted -- to a less desirable maximum-security unit.

No one contends, however, that the transfer is intended to punish prisoners for exercising their Fifth Amendment rights. Rather, the limitation on these rights is incidental to Kansas' legitimate **[****29]** penological reason for the transfer: Due to limited space, inmates who do not participate in their respective programs will be moved out of the facility where the programs are held to make room for other inmates. As the Secretary of Corrections has explained, "it makes no **[*39]** sense to have someone who's not participating in a program taking up a bed in a setting where someone else who may be willing to participate in a program could occupy that bed

and participate in a program." App. 99.

It is well settled that the decision where to house inmates is at the core of prison administrators' expertise. See *Meachum* v. *Fano,* 427 U.S. 215, 225, 49 L. Ed. 2d 451, 96 S. Ct. 2532 (1976). For this reason the Court has not required administrators to conduct a hearing before transferring a prisoner to a bed in a different prison, even if "life in one prison is much more disagreeable than in another." *Ibid.* The Court has considered the proposition that a prisoner in a more comfortable facility might begin to feel entitled to remain there throughout his term of incarceration. The Court has concluded, nevertheless, that this expectation "is too ephemeral and insubstantial to trigger procedural due process protections **[****30]** **[***61]** as long as prison officials have discretion to transfer him for whatever reason or for no reason at all." *Id.,* at 228. This logic has equal force in analyzing respodent's self-incrimination claim.

[2028]** Respondent also complains that he will be demoted from Level III to Level I status as a result of his decision not to participate. This demotion means the loss of his personal television; less access to prison organizations and the gym area; a reduction in certain pay opportunities and canteen privileges; and restricted visitation rights. App. 27-28. An essential tool of prison administration, however, is the authority to offer inmates various incentives to behave. The Constitution accords prison officials wide latitude to bestow or revoke these perquisites as they see fit. Accordingly, *Hewitt* v. *Helms,* 459 U.S. 460, 467, n. 4, 74 L. Ed. 2d 675, 103 S. Ct. 864 (1983), held that an inmate's transfer to another facility did not in itself implicate a liberty interest, even though that transfer resulted in the loss of "access to vocational, educational, recreational, and rehabilitative programs." Respondent concedes that no liberty interest is implicated in this case. Tr. of Oral Arg. 45. **[****31]** To be sure, cases like *Meachum* and **[*40]** *Hewitt* involved the Due Process Clause rather than the privilege against compelled self-incrimination. Those cases nevertheless underscore the axiom that, by virtue of their convictions, inmates must expect significant restrictions, inherent in prison life, on rights and privileges free citizens take for granted.

Respondent fails to cite a single case from this Court holding that the denial of discrete prison privileges for refusal to participate in a rehabilitation program amounts to unconstitutional compulsion. Instead, relying on the so-called penalty cases, respondent treats the fact of his incarceration as if it were irrelevant. See, *e.g., Garrity* v. *New Jersey,* 385 U.S. 493, 17 L. Ed. 2d 562, 87 S. Ct. 616 (1967); *Spevack* v. *Klein,* 385 U.S. 511, 17 L. Ed. 2d 574, 87 S. Ct. 625 (1967). Those cases, however, involved free citizens given the choice between invoking the Fifth Amendment privilege and sustaining their economic livelihood. See, *e.g., id.,* at 516 ("Threat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion"). Those principles are not easily extended to the **[****32]** prison context, where inmates surrender upon incarceration their rights to pursue a livelihood and to contract freely with the State, as well as many other basic freedoms. The persons who asserted rights in *Garrity* and *Spevack* had not been convicted of a crime. It would come as a surprise if *Spevack* stands for the proposition that when a lawyer has been disbarred by reason of a final criminal conviction, the court or agency considering reinstatement of the right to practice law could not consider that the disbarred attorney has admitted his guilt and expressed contrition. Indeed, this consideration is often given dispositive weight by this Court itself on routine motions for reinstatement. The current case is more complex, of course, in that respondent is also required to discuss other criminal acts for which he might still be liable for prosecution. On this point, however, there is still a critical distinction between the instant case and **[***62]** *Garrity* or *Spevack*. Unlike those cases, **[*41]** respondent here is asked to discuss other past crimes as part of a legitimate rehabilitative program conducted within prison walls.

To reject out of hand these considerations would be to **[****33]** ignore the State's interests in offering rehabilitation programs and providing for the efficient administration of its prisons. There is no indication that the SATP is an elaborate attempt to avoid the protections offered by the privilege against compelled self-incrimination. Rather, the program serves an important social purpose. It would be bitter medicine to treat as irrelevant the State's legitimate interests and to invalidate the SATP on the ground that it incidentally burdens an inmate's right to remain silent.

Determining what constitutes unconstitutional compulsion involves a question of judgment: Courts must decide whether the consequences of an inmate's choice to remain silent are closer to the **[**2029]** physical torture against which the Constitution clearly protects or the *de minimis* harms against which it does not. The *Sandin* framework provides a reasonable means of assessing whether the response of prison administrators to correctional and rehabilitative

necessities are so out of the ordinary that one could sensibly say they rise to the level of unconstitutional compulsion.

Prison context or not, respondent's choice is marked less by compulsion than by choices the Court **[****34]** has held give no rise to a self-incrimination claim. The "criminal process, like the rest of the legal system, is replete with situations requiring the making of difficult judgments as to which course to follow. Although a defendant may have a right, even of constitutional dimensions, to follow whichever course he chooses, the Constitution does not by that token always forbid requiring him to choose." *McGautha* v. *California,* 402 U.S. 183, 213, 28 L. Ed. 2d 711, 91 S. Ct. 1454 (1971) (citation and internal quotation marks omitted). It is well settled that the government need not make the exercise of the Fifth Amendment privilege cost free. See, *e.g., Jenkins* v. *Anderson,* 447 U.S. 231, 238, 65 L. Ed. 2d 86, 100 S. Ct. 2124 **[*42]** (1980) (a criminal defendant's exercise of his Fifth Amendment privilege prior to arrest may be used to impeach his credibility at trial); *Williams* v. *Florida,* 399 U.S. 78, 84, 26 L. Ed. 2d 446, 90 S. Ct. 1893-85 (1970) (a criminal defendant may be compelled to disclose the substance of an alibi defense prior to trial or be barred from asserting it).

The cost to respondent of exercising his Fifth Amendment privilege -- denial of certain perquisites that make his life in prison more tolerable -- is much **[****35]** less than that borne by the defendant in *McGuatha*. There, the Court upheld a procedure that allowed statements, which were made by a criminal defendant to mitigate his responsibility and avoid the death penalty, to be used against him as evidence of his guilt. 402 U.S. at 217. The Court likewise has held that plea bargaining does not violate the Fifth Amendment, even though criminal defendants may feel considerable pressure to admit guilt in order to obtain more lenient treatment. See, *e.g., Bordenkircher* v. *Hayes,* 434 U.S. 357, 54 L. Ed. 2d 604, 98 S. Ct. 663 (1978); *Brady,* 397 U.S. at 751.

[*63]** Nor does reducing an inmate's prison wage and taking away personal television and gym access pose the same hard choice faced by the defendants in *Baxter* v. *Palmigiano,* 425 U.S. 308, 47 L. Ed. 2d 810, 96 S. Ct. 1551 (1976), *Ohio Adult Parole Authority* v. *Woodard,* 523 U.S. 272, 140 L. Ed. 2d 387, 118 S. Ct. 1244, (1998), and *Minnesota* v. *Murphy,* 465 U.S. 420, 79 L. Ed. 2d 409, 104 S. Ct. 1136 (1984). In *Baxter*, a state prisoner objected to the fact that his silence at a prison disciplinary hearing would be held against him. The Court acknowledged that *Griffin* v. *California,* 380 U.S. 609, 14 L. Ed. 2d 106, 85 S. Ct. 1229 (1965), **[****36]** held that the Fifth Amendment prohibits courts from instructing a criminal jury that it may draw an inference of guilt from a defendant's failure to testify. The Court nevertheless refused to extend the *Griffin* rule to the context of state prison disciplinary hearings because those proceedings "involve the correctional process and important state interests other than conviction for crime." 425 U.S. at 319. Whereas the inmate in the present case faces the loss of certain privileges, the prisoner in **[*43]** *Baxter* faced 30 days in punitive segregation as well as the subsequent downgrade of his prison classification status. *Id.,* at 313.

In *Murphy,* the defendant feared the possibility of additional jail time as a result of his decision to remain silent. The defendant's probation officer knew the defendant had committed a rape and murder unrelated to his probation. One of the terms of the defendant's probation required him to be truthful with the probation officer in all matters. Seizing upon this, the officer interviewed the defendant **[**2030]** about the rape and murder, and the defendant admitted his guilt. The Court found no Fifth Amendment violation, despite **[****37]** the defendant's fear of being returned to prison for 16 months if he remained silent. 465 U.S. at 422, 438.

In *Woodard,* the plaintiff faced not loss of a personal television and gym access, but loss of life. In a unanimous opinion just four Terms ago, this Court held that a death row inmate could be made to choose between incriminating himself at his clemency interview and having adverse inferences drawn from his silence. The Court reasoned that it "is difficult to see how a voluntary interview could 'compel' respondent to speak. He merely faces a choice quite similar to the sorts of choices that a criminal defendant must make in the course of criminal proceedings, none of which has ever been held to violate the Fifth Amendment." 523 U.S. at 286. As here, the inmate in *Woodard* claimed to face a Hobson's choice: He would damage his case for clemency no matter whether he spoke and incriminated himself, or remained silent and the clemency board construed that silence against him. Unlike here, the Court nevertheless concluded that the pressure the inmate felt to speak to improve his chances of clemency did not constitute unconstitutional compulsion. **[****38]** *Id.,* at 287-288.

Woodard, *Murphy,* and *Baxter* illustrate that the consequences respondent faced here did not amount to unconstitutional compulsion. Respondent and the

dissent attempt to distinguish *Baxter*, *Murphy,* and *Woodard* on the dual **[*44]** grounds that **[***64]** (1) the penalty here followed automatically from respondent's decision to remain silent, and (2) respondent's participation in the SATP was involuntary. Neither distinction would justify departing from this Court's precedents, and the second is question begging in any event.

It is proper to consider the nexus between remaining silent and the consequences that follow. Plea bargains are not deemed to be compelled in part because a defendant who pleads not guilty still must be convicted. Cf. *Brady,* 397 U.S. at 751-752. States may award good-time credits and early parole for inmates who accept responsibility because silence in these circumstances does not automatically mean the parole board, which considers other factors as well, will deny them parole. See *Baxter,* 425 U.S. at 317-318. While the automatic nature of the consequence may be a necessary condition to finding **[****39]** unconstitutional compulsion, however, that is not a sufficient reason alone to ignore *Woodard*, *Murphy*, and *Baxter*. Even if a consequence follows directly from a person's silence, one cannot answer the question whether the person has been compelled to incriminate himself without first considering the severity of the consequences.

Nor can *Woodard* be distinguished on the alternate ground that respondent's choice to participate in the SATP was involuntary, whereas the death row inmate in *Woodard* chose to participate in clemency proceedings. This distinction assumes the answer to the compulsion inquiry. If respondent was not compelled to participate in the SATP, his participation was voluntary in the only sense necessary for our present inquiry. Kansas asks sex offenders to participate in SATP because, in light of the high rate of recidivism, it wants all, not just the few who volunteer, to receive treatment. Whether the inmates are being asked or ordered to participate depends entirely on the consequences of their decision not to do so. The parties in *Woodard*, *Murphy*, and *Baxter* all were faced with ramifications far worse than respondent faces here, and **[****40]** in each of those cases the Court **[*45]** determined that their hard choice between silence and the consequences was not compelled. It is beyond doubt, of course, that respondent would prefer not to choose between losing prison privileges and accepting responsibility for his past crimes. It is a choice, nonetheless, that does not amount to compulsion, **[**2031]** and therefore one Kansas may require respondent to make.

The Federal Government has filed an *amicus* brief describing its sex offender treatment program. Were respondent's position to prevail, the constitutionality of the federal program would be cast into serious doubt. The fact that the offender in the federal program can choose to participate without being given a new prisoner classification is not determinative. For, as the Government explains, its program is conducted at a single, 112-bed facility that is more desirable than other federal prisons. Tr. of Oral Arg. 22. Inmates choose at the outset whether to enter the federal program. Once accepted, however, inmates must continue to discuss and accept responsibility for their crimes if they wish to maintain the status quo and remain in their more comfortable accommodations. Otherwise they **[****41]** will be expelled from the program and **[***65]** sent to a less desirable facility. *Id.,* at 27. Thus the federal program is different from Kansas' SATP only in that it does not require inmates to sacrifice privileges besides housing as a consequence of nonparticipation. The federal program is comparable to the Kansas program because it does not offer participants use immunity and because it conditions a desirable housing assignment on inmates' willingness to accept responsibility for past behavior. Respondent's theory cannot be confined in any meaningful way, and state and federal courts applying that view would have no principled means to determine whether these similarities are sufficient to render the federal program unconstitutional.

Respondent is mistaken as well to concentrate on the so-called reward/penalty distinction and the illusory baseline **[*46]** against which a change in prison conditions must be measured. The answer to the question whether the government is extending a benefit or taking away a privilege rests entirely in the eye of the beholder. For this reason, emphasis of any baseline, while superficially appealing, would be an inartful addition to an already confused area of jurisprudence. **[****42]** The prison warden in this case stated that it is largely a matter of chance where in a prison an inmate is assigned. App. 59-63. Even if Inmates A and B are serving the same sentence for the same crime, Inmate A could end up in a medium-security unit and Inmate B in a maximum-security unit based solely on administrative factors beyond their control. Under respondent's view, however, the Constitution allows the State to offer Inmate B the opportunity to live in the medium-security unit conditioned on his participation in the SATP, but does not allow the State to offer Inmate A the opportunity to live in that same medium-security unit subject to the same conditions. The consequences for Inmates A and B are identical: They may participate and

live in medium security or refuse and live in maximum security. Respondent, however, would have us say the Constitution puts Inmate A in a superior position to Inmate B solely by the accident of the initial assignment to a medium-security unit.

This reasoning is unsatisfactory. The Court has noted before that "we doubt that a principled distinction may be drawn between 'enhancing' the punishment imposed upon the petitioner and denying him the 'leniency' **[****43]** he claims would be appropriate if he had cooperated." *Roberts* v. *United States,* 445 U.S. 552, 557, 63 L. Ed. 2d 622, 100 S. Ct. 1358, n. 4 (1980). Respondent's reasoning would provide States with perverse incentives to assign all inmates convicted of sex offenses to maximum security prisons until near the time of release, when the rehabilitation program starts. The rule would work to the detriment of the entire class of sex offenders who might not otherwise be placed in maximum-security facilities. And prison administrators **[*47]** would be forced, before making routine prison housing decisions, to identify each inmate's so-called baseline and determine whether an adverse effect, however marginal, will result from the administrative **[**2032]** decision. The easy alternatives that respondent predicts for prison administrators would turn out to be not so trouble free.

Respondent's analysis also would call into question the constitutionality of an accepted feature of federal **[***66]** criminal law: the downward adjustment for acceptance of criminal responsibility provided in § 3E1.1 of the United States Sentencing Guidelines (Nov. 2002). If the Constitution does not permit the government to condition the use of a personal television **[****44]** on the acceptance of responsibility for past crimes, it is unclear how it could permit the government to reduce the length of a prisoner's term of incarceration based upon the same factor. By rejecting respondent's theory, we do not, in this case, call these policies into question.

* * *

Acceptance of responsibility is the beginning of rehabilitation. And a recognition that there are rewards for those who attempt to reform is a vital and necessary step toward completion. The Court of Appeals' ruling would defeat these objectives. If the State sought to comply with the ruling by allowing respondent to enter the program while still insisting on his innocence, there would be little incentive for other SATP participants to confess and accept counseling; indeed, there is support for Kansas' view that the dynamics of the group therapy would be impaired. If the State had to offer immunity, the practical effect would be that serial offenders who are incarcerated for but one violation would be given a windfall for past bad conduct, a result potentially destructive of any public or state support for the program and quite at odds with the dominant goal of acceptance of responsibility. If the **[****45]** State found it was forced to graduate prisoners from its rehabilitation program without knowing **[*48]** what other offenses they may have committed, the integrity of its program would be very much in doubt. If the State found it had to comply by allowing respondent the same perquisites as those who accept counseling, the result would be a dramatic illustration that obduracy has the same rewards as acceptance, and so the program itself would become self-defeating, even hypocritical, in the eyes of those whom it seeks to help. The Fifth Amendment does not require the State to suffer these programmatic disruptions when it seeks to rehabilitate those who are incarcerated for valid, final convictions.

The Kansas SATP represents a sensible approach to reducing the serious danger that repeat sex offenders pose to many innocent persons, most often children. The State's interest in rehabilitation is undeniable. There is, furthermore, no indication that the SATP is merely an elaborate ruse to skirt the protections of the privilege against compelled self-incrimination. Rather, the program allows prison administrators to provide to those who need treatment the incentive to seek it.

The judgment of **[****46]** the Court of Appeals is reversed, and the case is remanded for further proceedings.

It is so ordered.

Concur by: O'CONNOR

Concur

JUSTICE **O'CONNOR**, concurring in the judgment.

[1D]The Court today is divided on the question of what standard to apply when evaluating compulsion for the purposes of the Fifth Amendment privilege against self-incrimination in a prison setting. I write separately because, although I agree with JUSTICE STEVENS that the Fifth Amendment compulsion standard is broader than the "atypical and significant hardship" standard **[***67]** we have adopted for evaluating due process claims in prisons, see *post,* at 5-7 (dissenting opinion)

(citing *Meachum* v. *Fano,* 427 U.S. 215, 49 L. Ed. 2d 451, 96 S. Ct. 2532 (1976)). I do not believe that the alterations in respondent's prison conditions as a result of his failure to participate in the Sexual **[*49]** Abuse Treatment Program (SATP) were so great as to constitute compulsion for the purposes of **[**2033]** the Fifth Amendment privilege against self-incrimination. I therefore agree with the plurality that the decision below should be reversed.

The text of the Fifth Amendment does not prohibit all penalties levied in response to a person's refusal to incriminate himself **[****47]** or herself -- it prohibits only the compulsion of such testimony. Not all pressure necessarily "compels" incriminating statements.

For instance, in *Miranda* v. *Arizona,* 384 U.S. 436, 455, 16 L. Ed. 2d 694, 86 S. Ct. 1602, 10 Ohio Misc. 9, 36 Ohio Op. 2d 237 (1966), we found that an environment of police custodial interrogation was coercive enough to require prophylactic warnings only after observing that such an environment exerts a "heavy toll on individual liberty." But we have not required *Miranda* warnings during noncustodial police questioning. See, *e.g.*, *Beckwith* v. *United States,* 425 U.S. 341, 48 L. Ed. 2d 1, 96 S. Ct. 1612 (1976). In restricting *Miranda*'s applicability, we have not denied that noncustodial questioning imposes some sort of pressure on suspects to confess to their crimes. See *Oregon* v. *Mathiason,* 429 U.S. 492, 495, 50 L. Ed. 2d 714, 97 S. Ct. 711 (1977) *(per curiam)* ("Any interview of one suspected of a crime by a police officer will have coercive aspects to it . . . "); *Berkemer* v. *McCarty*, 468 U.S. 420, 440, 82 L. Ed. 2d 317, 104 S. Ct. 3138 (1984) (describing the "*comparatively* nonthreatening character of [noncustodial] detentions" (emphasis added)). Rather, as suggested by the text of the Fifth Amendment, we have asked **[****48]** whether the pressure imposed in such situations rises to a level where it is likely to "compel" a person "to be a witness against himself."

The same analysis applies to penalties imposed upon a person as a result of the failure to incriminate himself -- some penalties are so great as to "compel" such testimony, while others do not rise to that level. Our precedents establish that certain types of penalties are capable of coercing incriminating testimony: termination of employment, *Uniformed Sanitation Men Assn., Inc.* v. *Commissioner of Sanitation of City of New York,* 392 U.S. 280, 20 L. Ed. 2d 1089, 88 S. Ct. 1917 (1968), the loss of a professional **[*50]** license, *Spevack* v. *Klein,* 385 U.S. 511, 17 L. Ed. 2d 574, 87 S. Ct. 625 (1967), ineligibility to receive government contracts, *Lefkowitz* v. *Turley,* 414 U.S. 70, 38 L. Ed. 2d 274, 94 S. Ct. 316 (1973), and the loss of the right to participate in political associations and to hold public office, *Lefkowitz* v. *Cunningham,* 431 U.S. 801, 53 L. Ed. 2d 1, 97 S. Ct. 2132 (1977). All of these penalties, however, are far more significant than those facing respondent here.

The first three of these so-called "penalty cases" involved the potential loss of one's livelihood, either through the loss **[****49]** of employment, loss of a professional license essential to employment, or loss of business through government contracts. In *Lefkowitz*, we held that the loss of government contracts was constitutionally equivalent to the loss of a **[***68]** profession because "[a government contractor] lives off his contracting fees just as surely as a state employee lives off his salary." 414 U.S. at 83; contra, *post,* at 15-16, n. 11. To support oneself in one's chosen profession is one of the most important abilities a person can have. A choice between incriminating oneself and being deprived of one's livelihood is the very sort of choice that is likely to compel someone to be a witness against himself. The choice presented in the last case, *Cunningham*, implicated not only political influence and prestige, but also the First Amendment right to run for office and to participate in political associations. 431 U.S. at 807-808. In holding that the penalties in that case constituted compulsion for Fifth Amendment purposes, we properly referred to those consequences as "grave." *Id.,* at 807.

I do not believe the consequences facing respondent in this case **[****50]** are serious enough to compel him to be a witness against **[**2034]** himself. These consequences involve a reduction in incentive level, and a corresponding transfer from a medium-security to a maximum-security part of the prison. In practical terms, these changes involve restrictions on the personal property respondent can keep in his cell, a reduction in his visitation privileges, a reduction in the amount of money he can spend in the canteen, and a reduction in the **[*51]** wage he can earn through prison employment. See *ante*, at 3. These changes in living conditions seem to me minor. Because the prison is responsible for caring for respondent's basic needs, his ability to support himself is not implicated by the reduction in wages he would suffer as a result. While his visitation is reduced as a result of his failure to incriminate himself, he still retains the ability to see his attorney, his family, and members of the clergy. App. 27. The limitation on the possession of personal items, as well as the amount that respondent is allowed to spend at the canteen, may make his prison experience

more unpleasant, but seems very unlikely to actually compel him to incriminate himself.

JUSTICE STEVENS **[****51]** also suggests that the move to the maximum-security area of the prison would itself be coercive. See *post,* at 11. Although the District Court found that moving respondent to a maximum-security section of the prison would put him "in a more dangerous environment occupied by more serious offenders," 24 F. Supp. 2d 1152, 1155 (Kan. 1998), there was no finding about how great a danger such a placement posed. Because it is respondent's burden to prove compulsion, we may assume that the prison is capable of controlling its inmates so that respondent's personal safety is not jeopardized by being placed in the maximum-security area of the prison, at least in the absence of proof to the contrary.

JUSTICE STEVENS argues that the fact that the penalties facing respondent for refusal to incriminate himself are the same as those imposed for prison disciplinary violations also indicates that they are coercive. See *post,* at 10. I do not agree. Insofar as JUSTICE STEVENS' claim is that these sanctions carry a stigma that might compel respondent to incriminate himself, it is incorrect. Because the same sanctions **[***69]** are also imposed on all prisoners who refuse to participate in any **[****52]** recommended program, App. 19-20, any stigma attached to the reduction would be minimal. Insofar as **[*52]** JUSTICE STEVENS' claim is that these sanctions are designed to compel behavior because they are used as disciplinary tools, it is also flawed. There is a difference between the sorts of penalties that would give a prisoner a reason not to violate prison disciplinary rules and what would compel him to expose himself to criminal liability. Therefore, on this record, I cannot conclude that respondent has shown that his decision to incriminate himself would be compelled by the imposition of these penalties.

Although I do not think the penalties respondent faced were sufficiently serious to compel his testimony, I do not agree with the suggestion in the plurality opinion that these penalties could permissibly rise to the level of those in cases like *McGautha* v. *California,* 402 U.S. 183, 28 L. Ed. 2d 711, 91 S. Ct. 1454 (1971) (holding that statements made in the mitigation phase of a capital sentencing hearing may be used as evidence of guilt), *Bordenkircher* v. *Hayes,* 434 U.S. 357, 54 L. Ed. 2d 604, 98 S. Ct. 663 (1978) (holding that plea bargaining does not violate the Fifth Amendment privilege against self-incrimination), **[****53]** and *Ohio Adult Parole Authority* v. *Woodard,* 523 U.S. 272, 140 L. Ed. 2d 387, 118 S. Ct. 1244 (1998) (holding that there is no right to silence at a clemency interview). See *ante*, at 14-16. The penalties potentially faced in these cases -- longer incarceration and execution -- are far greater than those we have already held to constitute unconstitutional compulsion in the penalty cases. Indeed, the imposition of such outcomes as a penalty **[**2035]** for refusing to incriminate oneself would surely implicate a "liberty interest."

JUSTICE STEVENS attempts to distinguish these cases because, in each, the negative outcome did not follow directly from the decision to remain silent, and because none of these cases involved a direct order to testify. See *post,* at 7. As the plurality's opinion makes clear, however, these two factors do not adequately explain the difference between these cases and the penalty cases, where we have found compulsion based on the imposition of penalties far less onerous. See *ante,* at 16-17.

[*53] I believe the proper theory should recognize that it is generally acceptable to impose the risk of punishment, however great, so long as the actual imposition of such punishment is accomplished **[****54]** through a fair criminal process. See, *e.g.*, *McGautha* v. *California, supra,* at 213 ("[The] criminal process, like the rest of the legal system, is replete with situations requiring the making of difficult judgments as to which course to follow. Although a defendant may have a right, even of constitutional dimensions, to follow whichever course he chooses, the Constitution does not by that token always forbid requiring him to choose") (citation and internal quotation marks omitted). Forcing defendants to accept such consequences seems to me very different than imposing penalties for the refusal to incriminate oneself that go beyond the criminal process and appear, starkly, as government attempts to compel testimony; in the **[***70]** latter context, any penalty that is capable of compelling a person to be a witness against himself is illegitimate. But even this explanation of the privilege is incomplete, as it does not fully account for all of the Court's precedents in this area. Compare *Griffin* v. *California,* 380 U.S. 609, 14 L. Ed. 2d 106, 85 S. Ct. 1229 (1965) (holding that prosecutor may not comment on a defendant's failure to testify), with *Ohio Adult Parole Authority* v. *Woodard, supra* **[****55]** (holding that there is no right to silence at a clemency interview).

Complicating matters even further is the question of whether the denial of benefits and the imposition of burdens ought to be analyzed differently in this area.

Compare *ante*, at 18-19, with *post,* at 12-13. This question is particularly important given the existence of United States Sentencing Commission, Guidelines Manual § 3E1.1 (Nov. 2000), which can be read to offer convicted criminals the benefit of a lower sentence in exchange for accepting responsibility for their crimes. See *ante*, at 19-20.

I find the plurality's failure to set forth a comprehensive theory of the Fifth Amendment privilege against self-incrimination troubling. But because this case indisputably **[*54]** involves burdens rather than benefits, and because I do not believe the penalties assessed against respondent in response to his failure to incriminate himself are compulsive on any reasonable test, I need not resolve this dilemma to make my judgment in this case.

Although I do not agree that the standard for compulsion is the same as the due process standard we identified in *Sandin* v. *Conner,* 515 U.S. 472, 132 L. Ed. 2d 418, 115 S. Ct. 2293 (1995), I **[****56]** join in the judgment reached by the plurality's opinion.

Dissent by: STEVENS

Dissent

JUSTICE **STEVENS**, with whom JUSTICE **SOUTER**, JUSTICE **GINSBURG**, and JUSTICE **BREYER** join, dissenting.

[2B]No one could possibly disagree with the plurality's statement that "offering inmates minimal incentives to participate [in a rehabilitation program] does not amount to compelled self-incrimination prohibited by the Fifth Amendment." *Ante*, at 2. The question that this case presents, however, is whether the State may punish an inmate's assertion of his Fifth Amendment privilege with the same mandatory sanction that follows a disciplinary conviction for an offense such as theft, sodomy, riot **[**2036]** arson, or assault. Until today the Court has never characterized a threatened harm as "a minimal incentive." Nor have we ever held that a person who has made a valid assertion of the privilege may nevertheless be ordered to incriminate himself and sanctioned for disobeying such an order. This is truly a watershed case.

Based on an ad hoc appraisal of the benefits of obtaining confessions from sex offenders, balanced against the cost of honoring a bedrock constitutional right, the plurality holds that it is permissible **[****57]** to punish the assertion of the privilege with what it views as modest sanctions, provided that those sanctions are not given a "punitive" label. As I shall explain, the sanctions are in fact severe, but even if that were not so, the plurality's policy judgment does **[***71]** not justify the evisceration of a constitutional right. Despite the plurality's **[*55]** meandering attempt to justify its unprecedented departure from a rule of law that has been settled since the days of John Marshall, I respectfully dissent.

I

The text of the Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." It is well settled that the prohibition "not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also 'privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *Minnesota* v. *Murphy,* 465 U.S. 420, 426, 79 L. Ed. 2d 409, 104 S. Ct. 1136 (1984) (quoting *Lefkowitz* v. *Turley,* 414 U.S. 70, 77, 38 L. Ed. 2d 274, 94 S. Ct. 316 (1973)). If a person is protected by the privilege, he may "refuse to **[****58]** answer unless and until he is protected at least against the use of his compelled answers and evidence derived therefrom in any subsequent criminal case in which he is a defendant." *Id.*, at 78 (citing *Kastigar* v. *United States,* 406 U.S. 441, 32 L. Ed. 2d 212, 92 S. Ct. 1653 (1972)). Prison inmates -- including sex offenders -- do not forfeit the privilege at the jailhouse gate. *Murphy*, 465 U.S. at 426.

It is undisputed that respondent's statements on the admission of responsibility and sexual history forms could incriminate him in a future prosecution for perjury or any other offense to which he is forced to confess. [1] It

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[1] As a participant in the Sexual Abuse Treatment Program (SATP), respondent would be required to sign an "Admission of Responsibility" form setting forth the details of the offense for which he was convicted. Because he had testified at trial that his sexual intercourse with the victim before driving her back to her car was consensual, the District Court found that a written admission on this form would subject respondent to a possible charge of perjury. 24 F. Supp. 2d 1152, 1157 (Kan. 1998). In addition, the SATP requires participants to "generate a written sexual history which includes all prior sexual activities, regardless of whether such activities constitute uncharged criminal offenses." *Id.*, at 1155. The District Court

is also **[*56]** clear that he invoked his Fifth Amendment right by refusing to participate in the SATP on the ground that he would be required to incriminate himself. Once he asserted that right, the State could have offered respondent immunity from the use of his statements in a subsequent prosecution. Instead, the Kansas Department of Corrections (Department) ordered respondent either to incriminate himself or to lose his medium-security status. In my opinion that order, coupled with the threatened revocation of respondent's Level III privileges, **[****59]** unquestionably violated his Fifth Amendment rights.

Putting to one side the plurality's evaluation **[****60]** of the policy judgments made by Kansas, its central submission is that the threatened withdrawal of respondent's Level III and medium-security status is not sufficiently harmful to qualify as unconstitutional **[**2037]** compulsion. In support of this position, neither the plurality nor JUSTICE O'CONNOR cites a single Fifth Amendment case in which a person invoked the privilege and was **[***72]** nevertheless required to answer a potentially incriminating question. [2]

[**61]** The privilege against self-incrimination may have been born of the rack and the Star Chamber, see L. Levy, Origins of the Fifth Amendment 42 (I. Dee ed. 1999); *Andresen* v. *Maryland,* 427 U.S. 463, 470, 49 L. Ed. 2d 627, 96 S. Ct. 2737 (1976), but the Framers had a **[*57]** broader view of compulsion in mind when they drafted the Fifth Amendment. [3] **[****62]** We know, for example, that the privilege was thought to protect defendants from the moral compulsion associated with any statement made under oath. [4] In addition, the language of the Amendment, which focuses on a courtroom setting in which a defendant or a witness in a criminal trial invokes the privilege, encompasses the compulsion inherent in any judicial order overruling an assertion of the privilege. As Chief Justice Marshall observed in *United States* v. *Burr*, 25 F. Cas. 38, 40, F. Cas. No. 14692e (No. 14,692e) (CC Va. 1807): "If, in such a case, he say upon his oath that his answer would incriminate himself, the court can demand no other testimony of the fact."

Our holding in *Malloy* v. *Hogan,* 378 U.S. 1, 12 L. Ed. 2d 653, 84 S. Ct. 1489 (1964), that the privilege applies to the States through the Fourteenth Amendment, determined that the right to remain silent is itself a liberty interest protected by that Amendment. We explained that "the Fourteenth Amendment secures against state invasion the same privilege that the Fifth Amendment guarantees against federal infringement -- the right of a person to remain silent unless he chooses to speak *in the unfettered exercise of his own will, and to suffer no penalty* . . . **[*58]** for such silence." *Id.,* at 8 (emphasis added). Since *Malloy*, we have construed the text to prohibit not only **[****63]** direct orders to testify, but also indirect compulsion effected by comments on a defendant's refusal to take the stand, *Griffin* v. *California,* 380 U.S. 609, 613-614, 14 L. Ed. 2d 106, 85 S. Ct. 1229 (1965), and we have recognized that compulsion can **[***73]** be presumed from the circumstances surrounding custodial interrogation, see *Dickerson* v. *United States,* 530 U.S. 428, 435, 147 L. Ed. 2d 405, 120 S. Ct. 2326 (2000) ("The coercion inherent in custodial interrogation blurs the line between voluntary **[**2038]** and involuntary statements, and thus heightens the risk that an individual will not be

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found that the form "clearly seeks information that could incriminate the prisoner and subject him to further criminal charges." *Id.*, at 1157.

[2] Petitioners relied on two cases, *Fisher* v. *United States,* 425 U.S. 391, 48 L. Ed. 2d 39, 96 S. Ct. 1569 (1976), and *United States* v. *Washington,* 431 U.S. 181, 187-188, 52 L. Ed. 2d 238, 97 S. Ct. 1814 (1977). In *Fisher*, we held that the privilege does not permit the target of a criminal investigation to prevent his lawyer from answering a subpoena to produce incriminating documents. We reached that conclusion because the person asserting the privilege was not the one being compelled. In *Washington,* cited *ante*, at 8, a grand jury witness voluntarily answered questions after being advised of the privilege, though not of the fact that he was a potential defendant in danger of being indicted. In neither case did the witness assert the privilege against incriminating himself.

[3] The origins and evolution of the privilege have received significant scholarly attention and debate in recent years. See, *e.g.*, Hazlett, Nineteenth Century Origins of the Fifth Amendment Privilege Against Self-Incrimination, 42 Am. J. Legal Hist. 235 (1998); Amar & Lettow, Fifth Amendment First Principles: The Self-Incrimination Clause, 93 Mich. L. Rev. 857 (1995). The historical account is complicated by the fact that before *Boyd* v. *United States*, 116 U.S. 616, 29 L. Ed. 746, 6 S. Ct. 524 (1886), the privilege was treated as a common-law evidentiary doctrine separate from the Fifth Amendment. During that time, the privilege was also subsumed within general discussions of the voluntariness of confessions.

[4] Alschuler, A Peculiar Privilege in Historical Perspective, in The Privilege Against Self-Incrimination 181, 192-193 (R. Helmholz et al. eds. 1997) (discussing historical sources which indicate that the "privilege prohibited (1) incriminating interrogation under oath, (2) torture, and (3) probably other forms of coercive interrogation such as threats of future punishment and promises of leniency" (footnotes omitted)).

'accorded his privilege under the Fifth Amendment . . . not to be compelled to incriminate himself '") (quoting *Miranda* v. *Arizona,* 384 U.S. 436, 439, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966)). Without requiring the deprivation of any other liberty interest, we have found prohibited compulsion in the threatened loss of the right to participate in political associations, *Lefkowitz* v. *Cunningham,* 431 U.S. 801, 53 L. Ed. 2d 1, 97 S. Ct. 2132 (1977), forfeiture of government contracts, *Lefkowitz* v. *Turley,* 414 U.S. at 82, loss of employment, *Uniformed Sanitation Men Assn., Inc.* v. *Commissioner of Sanitation of City of New York,* 392 U.S. 280, 20 L. Ed. 2d 1089, 88 S. Ct. 1917 (1968), **[****64]** and disbarment, *Spevack* v. *Klein,* 385 U.S. 511, 516, 17 L. Ed. 2d 574, 87 S. Ct. 625 (1967). None of our opinions contains any suggestion that compulsion should have a different meaning in the prison context. Nor is there any support in our Fifth Amendment jurisprudence for the proposition that nothing short of losing one's livelihood is sufficient to constitute compulsion. Accord, *Turley*, 414 U.S. at 83.

The plurality's suggestion that our decision in *Meachum* v. *Fano,* 427 U.S. 215, 49 L. Ed. 2d 451, 96 S. Ct. 2532 (1976), supports a novel interpretation of the Fifth Amendment, see *ante*, at 11, is inconsistent with the central rationale of that case. In *Meachum*, a group of prison inmates urged the Court to hold that the Due Process Clause entitled them to a hearing prior to their transfer to a substantially less favorable facility. Relying on the groundbreaking decisions in *Morrissey* v. *Brewer,* 408 U.S. 471, 33 L. Ed. 2d 484, 92 S. Ct. 2593 (1972), and *Wolff* v. *McDonnell,* 418 U.S. 539, 41 L. Ed. 2d 935, 94 S. Ct. 2963, 71 Ohio Op. 2d 336 (1974), **[*59]** which had rejected the once-prevailing view that a prison inmate had no more rights than a "slave of the State," [5] the prisoners sought to extend those holdings to require judicial **[****65]** review of "any substantial deprivation imposed by prison authorities." The Court recognized that after *Wolff* and its progeny, convicted felons retain "a variety of important rights that the courts must be alert to protect." Although *Meachum* refused to expand the constitutional rights of inmates, we did not narrow the protection of any established right. Indeed, Justice White explicitly limited the holding to prison conditions that "do not otherwise violate the Constitution," 427 U.S. at 224. [6]

[**66]** Not a word in our discussion of the privilege in *Ohio Adult Parole Authority* v. *Woodard,* 523 U.S. 272, 140 L. Ed. 2d 387, 118 S. Ct. 1244 **[***74]** (1998), *ante*, at 16, requires a heightened showing of compulsion in the prison context to establish a Fifth Amendment violation. That case is wholly unlike this one because Woodard was not ordered to incriminate himself and was not punished for refusing to do so. He challenged Ohio's clemency procedures, arguing, *inter alia*, that an interview with members of the clemency board offered to inmates one week before their clemency hearing presented him with a Hobson's choice that violated the privilege against self-incrimination. He could either take advantage of the interview and risk incriminating himself, or decline the interview, in which case the clemency board might draw adverse inferences from his decision not to testify. We concluded that the prisoner who was offered "a voluntary interview" is in the same position as **[*60]** any defendant **[**2039]** faced with the option of either testifying or accepting the risk that adverse inferences may be drawn from his silence. 523 U.S. at 286.

Respondent was directly ordered by prison authorities to participate in **[****67]** a program that requires incriminating disclosures, whereas no one ordered Woodard to do anything. Like a direct judicial order to answer questions in the courtroom, an order from the State to participate in the SATP is inherently coercive. Cf. *Turley*, 414 U.S. at 82 ("The waiver sought by the State, under threat of loss of contracts, would have been no less compelled than a direct request for the testimony without resort to the waiver"). Moreover, the penalty for refusing to participate in the SATP is automatic. Instead of conjecture and speculation about the indirect consequences that may flow from a decision to remain silent, we can be sure that defiance of a direct order carries with it the stigma of being a lawbreaker or a problem inmate, as well as other specified penalties. The penalty involved in this case is a mandated official response to the assertion of the privilege.

In *Baxter* v. *Palmigiano,* 425 U.S. 308, 47 L. Ed. 2d 810, 96 S. Ct. 1551 (1976), *ante*, at 15, we held that a prison disciplinary proceeding did not violate the privilege, in

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[5] See *Meachum* v. *Fano,* 427 U.S. 215, 231, 49 L. Ed. 2d 451, 96 S. Ct. 2532 (1976) (STEVENS, J., dissenting).

[6] In his opinion for the Court in the companion case, *Montanye* v. *Haymes,* 427 U.S. 236, 242, 49 L. Ed. 2d 466, 96 S. Ct. 2543 (1976), Justice White reiterated this point: "As long as the conditions or degree of confinement to which the prisoner is subjected are within the sentence imposed upon him and [are] not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight."

part, because the State had not "insisted nor asked that Palmigiano waive his Fifth Amendment privilege," and it was "undisputed **[****68]** that an inmate's silence in and of itself [was] insufficient to support an adverse decision by the Disciplinary Board." 425 U.S. at 317-318. We distinguished the "penalty cases," *Garrity* v. *New Jersey,* 385 U.S. 493, 17 L. Ed. 2d 562, 87 S. Ct. 616 (1967), and *Turley*, not because they involved civilians as opposed to prisoners, as the plurality assumes, *ante*, at 12-13, but because in those cases the "refusal to submit to interrogation and to waive the Fifth Amendment privilege, *standing alone and without regard to other evidence*, resulted in loss of employment or opportunity to contract with the State," whereas Palmigiano's silence "was given no more evidentiary value than was warranted **[*61]** by the facts surrounding his case." 425 U.S. at 318 (emphasis added). And, in a subsequent "penalty" case, we distinguished *Baxter* on the ground that refusing to incriminate oneself "was only one of a number of factors to be considered **[***75]** by the finder of fact in assessing a penalty, and was given no more probative value than the facts of the case warranted," while in *Cunningham* "refusal to waive the Fifth Amendment privilege [led] automatically and without more to **[****69]** imposition of sanctions." 431 U.S. at 808, n. 5.

Similarly, in *Minnesota* v. *Murphy*, 465 U.S. at 438-439, while "the State could not constitutionally carry out a threat to revoke probation for the legitimate exercise of the Fifth Amendment privilege," because revocation was not automatic under the Minnesota statute, we concluded that "Murphy could not reasonably have feared that the assertion of the privilege would have led to revocation." [7] These decisions recognized that there is an appreciable difference between an official **[**2040]** sanction for disobeying a direct order and a mere risk of adverse consequences stemming from a voluntary choice. The distinction is not a novel one, nor is it simply offered to "justify departing from this Court's precedents," *ante*, at 16. Rather it is a distinction that we have drawn throughout our cases; therefore, it is the plurality's **[*62]** disregard for both factors that represents an unjustified departure. Unlike *Woodard*, *Murphy*, and *Baxter*, respondent cannot invoke his Fifth Amendment rights and then gamble on whether the Department will revoke his Level III status; the punishment is mandatory. The fact that **[****70]** this case involves a prison inmate, as did *Woodard* and *Baxter*, is not enough to render those decisions controlling authority. Since we have already said inmates do not forfeit their Fifth Amendment rights at the jailhouse gate, *Murphy*, 465 U.S. at 426, the plurality must point to something beyond respondent's status as a prisoner to justify its departure from our precedent.

[**71]** II

The plurality and JUSTICE O'CONNOR hold that the consequences stemming from respondent's invocation of the privilege are not serious enough to constitute compulsion. The threat of transfer to Level I and a maximum-security unit is not sufficiently coercive in their view -- either because the consequence is not really a penalty, just the loss of a benefit, or because it is a penalty, but an insignificant one. I strongly disagree.

It took respondent several years to acquire the status that he occupied in 1994 when he was ordered to participate in the SATP. Because of the nature of his convictions, in 1983 the Department initially placed him in a maximum-security classification. Not **[***76]** until 1989 did the Department change his "security classification to 'medium by exception' because of his good behavior." *Lile* v. *Simmons*, 23 Kan. App. 2d 1, 2, 929 P.2d 171, 172 (1996). Thus, the sanction at issue threatens to deprive respondent of a status in the prison community that it took him six years to earn and which he had successfully maintained for five more years when he was ordered to incriminate himself. Moreover, abruptly "busting" his custody back to Level I, App. **[****72]** 94, would impose the same stigma on him as would a disciplinary conviction for any of the most serious offenses described in petitioners' formal **[*63]** statement of Internal Management Policy and Procedure (IMPP). As the District Court found, the sanctions imposed on respondent "mirror the consequences imposed for serious disciplinary

[7] The plurality is quite wrong to rely on *Murphy* for the proposition that an individual is not compelled to incriminate himself when faced with the threat of return to prison. *Ante*, at 15. In *Murphy*, we did not have occasion to decide whether such a threat constituted compulsion because we held that "since Murphy revealed incriminating information instead of timely asserting his Fifth Amendment privilege, his disclosures were not compelled incriminations." 465 U.S. at 440. As we explained, "a witness confronted with questions that the government should reasonably expect to elicit incriminating evidence ordinarily must assert the privilege rather than answer if he desires not to incriminate himself. . . . But if he chooses to answer, his choice is considered to be voluntary since he was free to claim the privilege and would suffer no penalty as the result of his decision to do so." *Id.*, at 429. In contrast to Murphy, respondent has consistently asserted his Fifth Amendment privilege.

infractions." 24 F. Supp. 2d 1152, 1155 (Kan. 1998). This same loss of privileges is considered serious enough by prison authorities that it is used as punishment for theft, drug abuse, assault, and possession of dangerous contraband. [8]

[**73]** The punitive consequences of the discipline include not only the dignitary and reputational harms flowing from the transfer, but a serious loss of tangible privileges as well. Because he refused to participate in the SATP, respondent's visitation rights will be restricted. He will be able to earn only $ 0.60 per day, as compared to Level III inmates, who can potentially earn minimum wage. His access to prison organizations and activities will **[**2041]** be limited. He will no longer be able to send his family more than $ 30 per pay period. He will be prohibited from spending more than $ 20 per payroll period at the canteen, rather than the $ 140 he could spend at Level III, and he will be restricted in what property he can keep in his cell. App. 27-28. In addition, because he will be transferred to a maximum-security unit, respondent will be forced to share a cell with three other **[*64]** inmates rather than one, and his movement outside the cell will be substantially curtailed. *Id*., at 73, 83. The District Court found that the maximum-security unit is "a more dangerous environment occupied by more serious offenders." 24 F. Supp. 2d at 1155. [9]

Perhaps most importantly, respondent **[****74]** will no longer be able to earn **[***77]** his way back up to Level III status through good behavior during the remainder of his sentence. App. 17 ("To complete Level I, an inmate must . . . demonstrate a willingness to participate in recommended programs and/or work assignments for a full review cycle").

[**75]** The plurality's glib attempt to characterize these consequences as a loss of potential benefits rather than a penalty is wholly unpersuasive. The threatened transfer to Level I and to a maximum-security unit represents a significant, adverse change from the status quo. Respondent achieved his medium-security status after six years of good behavior and maintained that status during five more years. During that time, an inmate unquestionably develops settled expectations regarding the conditions of his confinement. These conditions then form the baseline against which any change must be measured, and rescinding them now surely constitutes punishment.

Paying attention to the baseline is not just "superficially appealing," *ante*, at 18. We have recognized that the government **[*65]** can extend a benefit in exchange for incriminating statements, see *Woodard*, 523 U.S. at 288 ("This pressure to speak in the hope of improving [one's] chance of being granted clemency does not make the interview compelled"), but cannot threaten to take away privileges as the cost of invoking Fifth Amendment rights, see *e.g.*, *Turley*, 414 U.S. at 82; *Spevack*, 385 U.S. at 516. **[****76]** Based on this distinction, nothing that I say in this dissent calls into question the constitutionality of *downward* adjustments for acceptance of responsibility under the United States Sentencing Guidelines, *ante*, at 19-20. Although such a reduction in sentence creates a powerful incentive for defendants to confess, it completely avoids the constitutional issue that would be presented if the Guidelines operated like the scheme here and authorized an *upward* adjustment whenever a defendant refused to accept responsibility. Similarly, taking into account an attorney's acceptance of responsibility or contrition in deciding whether to reinstate his membership to the bar of this Court, see *ante*, at 13, is obviously different from disbarring an attorney for invoking his privilege. By obscuring the distinction between penalties and incentives, it is the plurality that

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[8] IMPP 11-101 provides that an inmate "shall be automatically reduced to Level I for any of the following: (1) Termination from a work or program assignment for cause; (2) Refusal to participate in recommended programs at the time of placement; (3) Offenses committed in which a felony charge is filed with the district or county prosecutor; (4) Disciplinary convictions for: (a) Theft; (b) Being in a condition of drunkenness, intoxication, or a state of altered consciousness; (c) Use of stimulants, sedatives, unauthorized drugs, or narcotics, or the misuse, or hoarding of authorized or prescribed medication; (d) Sodomy, aggravated sodomy, or aggravated sexual act; (e) Riot or incitement to riot; (f) Arson; (g) Assault; (h) Battery; (i) Inmate Activity (limitations); (j) Sexual Activity; (k) Interference with Restraints; (l) Relationships with Staff; (m) Work Performance; or (n) Dangerous Contraband." App. 19-20 (citations omitted).

[9] Respondent attested to the fact that in his experience maximum security "is a very hostile, intimidating environment because most of the inmates in maximum tend to have longer sentences and are convicted of more serious crimes, and, as a consequence, care less how they act or treat others." *Id.,* at 41-42. He explained that in the maximum-security unit "there is far more gang activity," "reported and unreported rapes and assaults of inmates are far more prevalent," and "sex offenders . . . are seen as targets for rape and physical and mental assaults," whereas in medium security, "because the inmates want to maintain their medium security status, they are less prone to breaking prison rules or acting violently." *Id.*, at 42-43.

calls into question both the Guidelines and plea bargaining. See *Corbitt* v. *New Jersey,* 439 U.S. 212, 223-224, 58 L. Ed. 2d 466, 99 S. Ct. 492 (1978) ("Nor does this record indicate that he was being punished for exercising a constitutional right . . . . Homicide defendants who are willing **[**2042]** to plead *non vult* may be treated **[****77]** more leniently than those who go to trial, but withholding the possibility of leniency from the latter cannot be equated with impermissible punishment as long as our cases sustaining plea bargaining remain undisturbed"). [10]

[10] The plurality quotes a footnote in *Roberts* v. *United States,* 445 U.S. 552, 63 L. Ed. 2d 622, 100 S. Ct. 1358 (1980), for the proposition that a principled distinction cannot be drawn between enhancing punishment and denying leniency, *ante*, at 19. This quote is misleading because, as in *Minnesota* v. *Murphy*, 465 U.S. 420, 79 L. Ed. 2d 409, 104 S. Ct. 1136 (1984), see n. 7, *supra*, Roberts failed to assert his privilege against self-incrimination, and we reiterated that the privilege is not self-executing, 445 U.S. at 559. Furthermore, the passage quoted by the plurality, 445 U.S. at 557, n. 4, was in reference to Roberts' claim that the sentencing judge could not consider his refusal to incriminate *a co-conspirator* in deciding whether to impose his sentences consecutively. In that context, the privilege is not implicated and compulsion is not constitutionally significant. While it is true that in some cases the line between enhancing punishment and refusing leniency may be difficult to draw, that does not mean the distinction is irrelevant for Fifth Amendment purposes.

It is curious that the plurality asserts the impracticality of drawing such a distinction, given that in this case a majority of the Court agrees that it is perfectly clear the consequences facing respondent represent a burden, rather than the denial of a benefit. *Ante*, at 6 (O'CONNOR, J., concurring in judgment). Our cases reveal that it is not only possible, but necessary to draw the distinction. For even *Bordenkircher* v. *Hayes,* 434 U.S. 357, 54 L. Ed. 2d 604, 98 S. Ct. 663 (1978), conditioned its entire analysis of plea bargaining on the assumption that the defendant had been charged with the greater offense prior to plea bargaining and, therefore, faced the denial of leniency rather than an enhanced penalty. *Id.,* at 360-361 ("While the prosecutor did not actually obtain the recidivist indictment until after the plea conferences had ended, his intention to do so was clearly expressed at the outset of plea negotiations. . . . This is not a situation, therefore, where the prosecutor without notice brought an additional and more serious charge after plea negotiations relating only to the original indictment had ended with the defendant's insistence on pleading not guilty. As a practical matter, in short, this case would be no different if the grand jury had indicted [the defendant] as a recidivist from the outset, and the prosecutor had offered to drop that charge as part of the plea bargain").

[**78] [*66]** Even if the change in respondent's **[***78]** status could properly be characterized as a loss of benefits to which he had no entitlement, the question at hand is not whether the Department could have refused to extend those benefits in the first place, but rather whether revoking them at this point constitutes a penalty for asserting the Fifth Amendment privilege. See *Perry* v. *Sindermann,* 408 U.S. 593, 597, 33 L. Ed. 2d 570, 92 S. Ct. 2694 (1972). The plurality contends that the transfer from medium to maximum security and the associated loss of Level III status is not intended to punish prisoners for asserting their Fifth Amendment rights, but rather is merely incidental to the prison's legitimate interest in making room for participants **[*67]** in the program. *Ante*, at 11. Of course, the Department could still house participants together without moving those who refuse to participate to more restrictive conditions of confinement and taking away their privileges. Moreover, petitioners have not alleged that respondent is taking up a bed in a unit devoted to the SATP; therefore, all the Department would have to do is allow respondent to stay in his current medium-security cell. If need be, the Department could **[****79]** always transfer respondent to another medium-security unit. Given the absence of evidence in the record that the Department has a shortage of medium-security beds, or even that there is a separate unit devoted to participants in the SATP, the only plausible explanation for the transfer to maximum security and loss of Level III status is that it serves as punishment for refusing to participate in the program.

JUSTICE O'CONNOR recognizes that the transfer is a penalty, but finds insufficient coercion because the "changes in [respondent's] living conditions seem to [her] minor." *Ante*, at 3 (opinion concurring in judgment). The coerciveness of the penalty in **[***79]** this case must be measured not by **[**2043]** comparing the quality of life in a prison environment with that in a free society, but rather by the contrast between the favored and disfavored classes of prisoners. It is obviously impossible to measure precisely the significance of the difference between being housed in a four-person, maximum-security cell in the most dangerous area of the prison, on the one hand, and having a key to one's own room, the right to take a shower, and the ability to move freely within adjacent areas during **[****80]** certain hours, on the other -- or to fully appreciate the importance of visitation privileges, being able to send more than $ 30 per pay period to family, having access to the yard for exercise, and the opportunity to participate in group activities. What is perfectly clear, however, is that it is the aggregate effect of those

penalties that creates compulsion. Nor is it coincidental that petitioners have selected this same **[*68]** group of sanctions as the punishment to be imposed for the most serious violations of prison rules. Considering these consequences as a whole and comparing the Department's treatment of respondent to the rest of the prison population, it is perfectly clear that the penalty imposed is "constitutionally indistinguishable from the coercive provisions we struck down in *Gardner*, *Sanitation Men*, and *Turley*." *Cunningham*, 431 U.S. at 807. [11]

[**81]** III

The SATP clearly serves legitimate therapeutic purposes. The goal of the program is to rehabilitate sex offenders, and the requirement that participants complete admission of responsibility and sexual history forms may well be an important component of that process. Mental health professionals seem to agree that accepting responsibility for past sexual misconduct is often essential to successful treatment, and that treatment programs can reduce the risk of recidivism by sex offenders. See Winn, Strategic and Systematic Management of Denial in Cognitive/Behavioral Treatment of Sexual Offenders, 8 Sexual Abuse: J. Research and Treatment 25, 26-27 (1996).

The program's laudable goals, however, do not justify reduced constitutional protection for those ordered to participate. "We have already rejected the notion that citizens may be forced to incriminate themselves because it serves a governmental need." *Cunningham*, 431 U.S. at 808. **[*69]** The benefits of obtaining confessions from sex offenders may be substantial, but "claims of overriding interests are not unusual in Fifth Amendment litigation," and until today at least "they have not fared well." *Turley*, 414 U.S. at 78. **[****82]** The State's interests in law enforcement and rehabilitation are present in every criminal case. If **[***80]** those interests were sufficient to justify impinging on prisoners' Fifth Amendment right, inmates would soon have no privilege left to invoke.

The plurality's willingness to sacrifice prisoners' Fifth Amendment rights is also unwarranted because available alternatives would allow the State to achieve the same objectives without impinging on inmates' privilege. *Turner* v. *Safley,* 482 U.S. 78, 93, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987). The most obvious alternative is to grant participants use immunity. See *Murphy*, 465 U.S. at 436, n. 7 ("[A] **[**2044]** State may validly insist on answers to even incriminating questions . . . as long as it recognizes that the required answers may not be used in a criminal proceeding and thus eliminates the threat of incrimination"); *Baxter*, 425 U.S. at 318 ("Had the State desired Palmigiano's testimony over his Fifth Amendment objection, we can but assume that it would have extended whatever use immunity is required by the Federal Constitution"). Petitioners have not provided any evidence that the program's therapeutic aims could not be served **[****83]** equally well by granting use immunity. Participants would still obtain all the therapeutic benefits of accepting responsibility and admitting past misconduct; they simply would not incriminate themselves in the process. At least one State already offers such protection, see Ky. Rev. Stat. Ann. § 197.440 (2001) ("Communications made in the application for or in the course of a sexual offender's diagnosis and treatment . . . shall be privileged from disclosure in any civil or criminal proceeding"), and there is no indication that its choice is incompatible with rehabilitation. In fact, the program's rehabilitative goals would likely be furthered by ensuring free and open discussion **[*70]** without the threat of prosecution looming over participants' therapy sessions.

The plurality contends that requiring immunity will undermine the therapeutic goals of the program because once "inmates know society will not punish them for their past offenses, they may be left with the false impression that society does not consider those crimes to be serious ones." *Ante*, at 7. See also Brief for 18 States as *Amici Curiae* 11 ("By subjecting offenders to prosecution for newly revealed offenses, and **[****84]** by adhering to its chosen policy of mandatory reporting for cases of suspected child sexual abuse, Kansas reinforces the sensible notion that wrongdoing carries consequences"). The idea that an inmate who is confined to prison for almost 20 years for an offense

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[11] JUSTICE O'CONNOR would distinguish these cases because the penalty involved the loss of one's livelihood, whereas here respondent will be housed, clothed, and fed regardless of whether he is in maximum or medium security. We rejected a similar argument in *Turley*, when we refused to distinguish *Gardner* v. *Broderick,* 392 U.S. 273, 20 L. Ed. 2d 1082, 88 S. Ct. 1913 (1968), and *Uniformed Sanitation Men Assn., Inc.* v. *Commissioner of Sanitation of City of New York,* 392 U.S. 280, 20 L. Ed. 2d 1089, 88 S. Ct. 1917 (1968), based on the difference between losing one's job and losing the ability to obtain government contracts. 414 U.S. at 83. We concluded that there was no "difference of constitutional magnitude between the threat of job loss to an employee of the State, and a threat of loss of contracts to a contractor." *Ibid*.

could be left with the impression that his crimes are not serious or that wrongdoing does not carry consequences is absurd. Moreover, the argument starts from a false premise. Granting use immunity does not preclude prosecution; it merely prevents the State from using an inmate's own words, and the fruits thereof, against him in a subsequent prosecution. *New Jersey* v. *Portash,* 440 U.S. 450, 457, 59 L. Ed. 2d 501, 99 S. Ct. 1292-458 (1979). The plurality's concern might be justified if the State were required to grant *transactional* immunity, but we have made clear since *Kastigar* that use immunity is sufficient to alleviate a potential Fifth Amendment violation, 406 U.S. at 453. Nor is a State *required* to grant use immunity in order to have a sex offender **[***81]** treatment program that involves admission of responsibility.

Alternatively, the State could continue to pursue its rehabilitative goals without violating participants' **[****85]** Fifth Amendment rights by offering inmates a voluntary program. The United States points out that an inmate's participation in the sexual offender treatment program operated by the Federal Bureau of Prisons is entirely voluntary. "No loss of institutional privileges flows from an inmate's decision not to participate **[*71]** in the program." [12] If an inmate chooses to participate in the federal program, he will be transferred from his "parent facility" to a "more desirable" prison, but if he refuses to participate in the first place, as respondent attempted to **[**2045]** do, he suffers no negative consequences. Tr. of Oral Arg. 21-22. Although the inmates in the federal program are not granted use immunity, they are not compelled to participate. Indeed, there is reason to believe successful rehabilitation is more likely for voluntary participants than for those who are compelled to accept treatment. See Abel, Mittelman, Becker, Rathner & Rouleau, Predicting Child Molesters' Response to Treatment, 528 Annals N. Y. Acad. of Sciences 223 (1988) (finding that greater perceived pressure to participate in treatment is strongly correlated with the dropout rate).

[**86]** Through its treatment program, Kansas seeks to achieve the admirable goal of reducing recidivism among sex offenders. In the process, however, the State demands an impermissible and unwarranted sacrifice from the participants. No matter what the goal, inmates should not be compelled to forfeit the privilege against self-incrimination simply because the ends are legitimate or because they have been convicted of sex offenses. Particularly in a case like this one, in which respondent has protested his innocence all along and is being compelled to confess to a crime that he still insists he did not commit, we ought to ask ourselves -- what if this is one of those rare cases in which the jury made a **[*72]** mistake and he is actually innocent? And in answering that question, we should consider that even members of the Star Chamber thought they were pursuing righteous ends.

I respectfully dissent.

References

60 Am Jur 2d, Penal and Correctional Institutions 26; 81 Am Jur 2d, Witnesses 82

USCS, Constitution, Amendment 5

L Ed Digest, Witnesses 88

L Ed Index, Self-Incrimination

Annotation References:

[**87]** Supreme Court's views regarding proceedings to which Fifth Amendment's privilege against self-incrimination applies. 65 L Ed 2d 1306.

Applicability, in proceedings under statutes relating to sexual psychopaths, of constitutional provisions for the protection of a person accused of crime. 34 ALR3d 652.

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[12] Brief for United States as *Amicus Curiae* 27. Because of this material difference between the Kansas and federal programs, recognizing the compulsion in this case would not cast any doubt on the validity of voluntary programs. The plurality asserts that "the federal program is different from Kansas' SATP only in that it does not require inmates to sacrifice privileges *besides housing* as a consequence of nonparticipation." *Ante*, at 18 (emphasis added). This statement is inaccurate because, as the quote in the text reveals, *no* loss of privileges follows from the decision not to participate in the federal program.

Smith v. Doe

Supreme Court of the United States

November 13, 2002, Argued ; March 5, 2003, Decided

No. 01-729

Reporter
538 U.S. 84 *; 123 S. Ct. 1140 **; 155 L. Ed. 2d 164 ***; 2003 U.S. LEXIS 1949 ****; 71 U.S.L.W. 4182; 2003 Cal. Daily Op. Service 1974; 16 Fla. L. Weekly Fed. S 142

DELBERT W. SMITH AND BRUCE M. BOTELHO, PETITIONERS v. JOHN DOE I ET AL.

Subsequent History: US Supreme Court rehearing denied by Smith v. Doe, 538 U.S. 1009, 155 L. Ed. 2d 844, 123 S. Ct. 1925, 2003 U.S. LEXIS 3409 (U.S., 2003)

Subsequent appeal at, On remand at Doe v. Tandeske, 361 F.3d 594, 2004 U.S. App. LEXIS 4993 (9th Cir., Mar. 17, 2004)

Prior History: [**1]** ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Doe v. Otte, 259 F.3d 979, 2001 U.S. App. LEXIS 16586 (9th Cir., 2001)

Disposition: Reversed and remanded.

Syllabus

Under the Alaska Sex Offender Registration Act (Act), any sex offender or child kidnaper incarcerated in the State must register with the Department of Corrections within 30 days before his release, providing his name, address, and other specified information. If the individual is at liberty, he must register with local law enforcement authorities within a working day of his conviction or of entering the State. If he was convicted of a single, nonaggravated sex crime, the offender must provide annual verification of the submitted information for 15 years. If he was convicted of an aggravated sex offense or of two or more **[****2]** sex offenses, he must register for life and verify the information quarterly. The offender's information is forwarded to the Department of Public Safety, which maintains a central registry of sex offenders. Some of the data, such as fingerprints, driver's license number, anticipated change of address, and whether the offender has had medical treatment afterwards is kept confidential. The offender's name, aliases, address, photograph, physical description, driver's license number, motor vehicle identification numbers, place of employment, date of birth, crime, date and place of conviction, length and conditions of sentence, and a statement as to whether the offender is in compliance with the Act's update requirements or cannot be located are, however, published on the Internet. Both the Act's registration and notification requirements are retroactive.

Respondents were convicted of aggravated sex offenses. Both were released from prison and completed rehabilitative programs for sex offenders. Although convicted before the Act's passage, respondents are covered by it. After the initial registration, they are required to submit quarterly verifications and notify the authorities of **[****3]** any changes. Both respondents, along with the wife of one of them, also a respondent here, brought this action under 42 U.S.C. § 1983, seeking to declare the Act void as to them under, *inter alia*, the *Ex Post Facto* Clause, U.S. Const., Art. I, § 10, cl. 1. The District Court granted petitioners summary judgment. The Ninth Circuit disagreed in relevant part, holding that, because its effects were punitive, the Act violates the *Ex Post Facto* Clause.

Held: Because the Alaska Sex Offender Registration Act is nonpunitive, its retroactive application does not violate the *Ex Post Facto* Clause. Pp. 4-18.

(a) The determinative question is whether the legislature meant to establish "civil proceedings." *Kansas* v. *Hendricks*, 521 U.S. 346, 361, 138 L. Ed. 2d 501, 117 S. Ct. 2072. If the intention was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, the Court must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate the State's intention to deem it civil. *E.g., ibid.* Because the Court ordinarily defers to the legislature's **[****4]** stated intent, *id.,* at 361, only the clearest proof will suffice to override that intent and

transform what has been denominated a civil remedy into a criminal penalty. See, *e.g., ibid.* Pp. 4-5.

(b) The Alaska Legislature's intent was to create a civil, nonpunitive regime. The Court first considers the statute's text and structure, *Flemming* v. *Nestor*, 363 U.S. 603, 617, 4 L. Ed. 2d 1435, 80 S. Ct. 1367, asking whether the legislature indicated either expressly or impliedly a preference for one label or the other, *Hudson* v. *United States,* 522 U.S. 93, 99, 139 L. Ed. 2d 450, 118 S. Ct. 488. Here, the statutory text states the legislature's finding that sex offenders pose a high risk of reoffending, identifies protecting the public from sex offenders as the law's primary interest, and declares that release of certain information about sex offenders to public agencies and the public will assist in protecting the public safety. This Court has already determined that an imposition of restrictive measures on sex offenders adjudged to be dangerous is a legitimate nonpunitive governmental objective. *Hendricks,* 521 U.S., at 363. Here, as in *Hendricks*, nothing on the statute's **[****5]** face suggests that the legislature sought to create anything other than a civil scheme designed to protect the public from harm. *Id.*, at 361. The contrary conclusion is not required by the Alaska Constitution's inclusion of the need to protect the public as one of the purposes of criminal administration. Where a legislative restriction is an incident of the State's power to protect the public health and safety, it will be considered as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment. *E.g., Flemming* v. *Nestor,* 363 U.S. 603, 616, 4 L. Ed. 2d 1435, 80 S. Ct. 1367. Other formal attributes of a legislative enactment, such as the manner of its codification or the enforcement procedures it establishes, are probative of the legislature's intent, see, *e.g., Hendricks*, 521 U.S., at 361, but are open to debate in this case. The Act's notification provisions are codified in the State's Health, Safety, and Housing Code, confirming the conclusion that the statute was intended as a nonpunitive regulatory measure. Cf., *id.,* at 361. The fact that the Act's registration provisions are codified in the State's Code **[****6]** of Criminal Procedure is not dispositive, since a statute's location and labels do not by themselves transform a civil remedy into a criminal one. See *United States* v. *One Assortment of 89 Firearms,* 465 U.S. 354, 364-365, 79 L. Ed. 2d 361, 104 S. Ct. 1099, and n. 6. The Code of Criminal Procedure contains many other provisions that do not involve criminal punishment. The Court's conclusion is not altered by the fact that the Act's implementing procedural mechanisms require the trial court to inform the defendant of the Act's requirements and, if possible, the period of registration required. That conclusion is strengthened by the fact that, aside from the duty to register, the statute itself mandates no procedures. Instead, it vests the authority to promulgate implementing regulations with the Department of Public Safety, an agency charged with enforcing both criminal *and* civil regulatory laws. Also telling is the fact that the Act does not require the procedures adopted to contain any safeguards associated with the criminal process. By contemplating distinctly civil procedures, the legislature indicated clearly that it intended a civil, not a criminal, sanction. *United States* v. *Ursery,* 518 U.S. 267, 289, 135 L. Ed. 2d 549, 116 S. Ct. 2135. **[****7]** Pp. 5-9.

(c) Respondents cannot show, much less by the clearest proof, that the Act's effects negate Alaska's intention to establish a civil regulatory scheme. In analyzing the effects, the Court refers to the seven factors noted in *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 168-169, 9 L. Ed. 2d 644, 83 S. Ct. 554, as a useful framework. First, the regulatory scheme, in its necessary operation, has not been regarded in the Nation's history and traditions as a punishment. The fact that sex offender registration and notification statutes are of fairly recent origin suggests that the Act was not meant as a punitive measure, or, at least, that it did not involve a traditional means of punishing. Respondents' argument that the Act, particularly its notification provisions, resembles shaming punishments of the colonial period is unpersuasive. In contrast to those punishments, the Act's stigma results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public. The fact that Alaska posts offender information on the Internet does not alter this conclusion. Second, the Act does not subject respondents **[****8]** to an affirmative disability or restraint. It imposes no physical restraint, and so does not resemble imprisonment, the paradigmatic affirmative disability or restraint. *Hudson,* 522 U.S., at 104. Moreover, its obligations are less harsh than the sanctions of occupational debarment, which the Court has held to be nonpunitive. See, *e.g., ibid.* Contrary to the Ninth Circuit's assertion, the record contains no evidence that the Act has led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred. Also unavailing is that court's assertion that the periodic update requirement imposed an affirmative disability. The Act, on its face, does not require these updates to be made in person. The holding that the registration system is parallel to probation or supervised release is rejected

because, in contrast to probationers and supervised releasees, offenders subject to the Act are free to move where they wish and to live and work as other citizens, with no supervision. While registrants must inform the authorities after they change their facial features, borrow a car, or seek psychiatric treatment, they are not required **[****9]** to seek permission to do so. Third, the Act does not promote the traditional aims of punishment. That it might deter future crimes is not dispositive. See, *e.g., Hudson, supra*, at 105. Moreover, the Ninth Circuit erred in concluding that the Act's registration obligations were retributive. While the Act does differentiate between individuals convicted of aggravated or multiple offenses and those convicted of a single nonaggravated offense, these broad categories and the reporting requirement's corresponding length are reasonably related to the danger of recidivism, and this is consistent with the regulatory objective. Fourth, the Act has a rational connection to a legitimate nonpunitive purpose, public safety, which is advanced by alerting the public to the risk of sex offenders in their community. That the Act may not be narrowly drawn to accomplish the stated purpose is not dispositive, since such imprecision does not suggest that the Act's nonpunitive purpose is a "sham or mere pretext." *Hendricks, supra*, at 371 (KENNEDY, J., concurring). Fifth, the regulatory scheme is not excessive with respect to the Act's purpose. The State's determination to **[****10]** legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not render the Act punitive. See, *e.g., Hawker* v. *New York,* 170 U.S. 189, 197, 42 L. Ed. 1002, 18 S. Ct. 573. *Hendricks, supra*, at 357-368, 364, distinguished. Moreover, the wide dissemination of offender information does not render the Act excessive, given the general mobility of the population. The question here is not whether the legislature has made the best choice possible to address the problem it seeks to remedy, but whether the regulatory means chosen are reasonable in light of the nonpunitive objective. The Act meets this standard. Finally, the two remaining *Mendoza-Martinez* factors -- whether the regulation comes into play only on a finding of scienter and whether the behavior to which it applies is already **[**1145]** a crime -- are of little weight in this case. Pp. 9-19.

Reversed and remanded.

Judges: KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, and THOMAS, JJ., joined. THOMAS, J., filed a concurring opinion. SOUTER, J., filed an opinion concurring in the judgment. **[****11]** STEVENS, J., filed a dissenting opinion. GINSBURG, J., filed a dissenting opinion, in which BREYER, J., joined.

Opinion by: KENNEDY

Opinion

[*174]** **[*89]** JUSTICE KENNEDY delivered the opinion of the Court.

[1A]The Alaska Sex Offender Registration Act requires convicted sex offenders to register with law enforcement authorities, and much of the information is made public. We must decide whether the registration requirement is a retroactive punishment prohibited by the *Ex Post Facto* Clause.

I

A

The State of Alaska enacted the Alaska Sex Offender Registration Act (Act) on May 12, 1994. 1994 Alaska Sess. Laws ch. 41. Like its counterparts in other States, the Act **[***175]** is termed a "Megan's Law." Megan Kanka was a 7-year-old New Jersey girl who was sexually assaulted and murdered in 1994 by a neighbor who, unknown to the victim's family, had prior convictions for sex offenses against children. The crime gave impetus to laws for mandatory registration of sex offenders and corresponding community notification. In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, title 17, 108 Stat. 2038, as amended, 42 U.S.C. § 14071, which conditions **[****12]** certain federal law enforcement funding on the States' adoption of sex offender registration laws and sets **[*90]** minimum standards for state programs. By 1996, every State, the District of Columbia, and the Federal Government had enacted some variation of Megan's Law.

The Alaska law, which is our concern in this case, contains two components: a registration requirement and a notification system. Both are retroactive. 1994 Alaska Sess. Laws ch. 41, § 12(a). The Act requires any "sex offender or child kidnapper who is physically present in the state" to register, either with the Department of Corrections (if the individual is incarcerated) or with the local law enforcement authorities (if the individual is at liberty). Alaska Stat. §§

12.63.010(a), (b) (2000). Prompt registration is mandated. If still in prison, a covered sex offender must register within 30 days before release; otherwise he must do so within a working day of his conviction or of entering the State. § 12.63.010(a). The sex offender must provide his name, aliases, identifying **[**1146]** features, address, place of employment, date of birth, conviction information, driver's license number, information about vehicles to which he has **[****13]** access, and postconviction treatment history. § 12.63.010(b)(1). He must permit the authorities to photograph and fingerprint him. § 12.63.010(b)(2).

If the offender was convicted of a single, nonaggravated sex crime, he must provide annual verification of the submitted information for 15 years. §§ 12.63.010(d)(1), 12.63.020(a)(2). If he was convicted of an aggravated sex offense or of two or more sex offenses, he must register for life and verify the information quarterly. §§ 12.63.010(d)(2), 12.63.020(a)(1). The offender must notify his local police department if he moves. § 12.63.010(c). A sex offender who knowingly fails to comply with the Act is subject to criminal prosecution. §§ 11.56.835, 11.56.840.

The information is forwarded to the Alaska Department of Public Safety, which maintains a central registry of sex offenders. § 18.65.087(a). Some of the data, such as fingerprints, driver's license number, anticipated change of address, and whether the offender has had medical treatment **[*91]** afterwards, is kept confidential. §§ 12.63.010(b), 18.65.087(b). The following information is made available to the public: "the sex offender's or child kidnapper's name, aliases, address, **[****14]** photograph, physical description, description[,] license [and] identification numbers of motor vehicles, place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, length and conditions of sentence, and a statement as to whether the offender or kidnapper is in compliance with [the update] requirements . . . or cannot be located." § 18.65.087(b). **[***176]** The Act does not specify the means by which the registry information must be made public. Alaska has chosen to make most of the nonconfidential information available on the Internet.

B

[1B]Respondents John Doe I and John Doe II were convicted of sexual abuse of a minor, an aggravated sex offense. John Doe I pleaded *nolo contendere* after a court determination that he had sexually abused his daughter for two years, when she was between the ages of 9 and 11; John Doe II entered a *nolo contendere* plea to sexual abuse of a 14-year-old child. Both were released from prison in 1990 and completed rehabilitative programs for sex offenders. Although convicted before the passage of the Act, respondents are covered by it. After the initial registration, they are required to submit quarterly **[****15]** verifications and notify the authorities of any changes. Both respondents, along with respondent Jane Doe, wife of John Doe I, brought an action under Rev. Stat. § 1979, 42 U.S.C. § 1983, seeking to declare the Act void as to them under the *Ex Post Facto* Clause of Article I, § 10, cl. 1, of the Constitution and the Due Process Clause of § 1 of the Fourteenth Amendment. The United States District Court for the District of Alaska granted summary judgment for petitioners. In agreement with the District Court, the Court of Appeals for the Ninth Circuit determined the state legislature had intended the Act to be a nonpunitive, civil **[*92]** regulatory scheme; but, in disagreement with the District Court, it held the effects of the Act were punitive despite the legislature's intent. In consequence, it held the Act violates the *Ex Post Facto* Clause. *Doe v. Otte*, 259 F.3d 979 (2001). We granted certiorari. 534 U.S. 1126 (2002).

II

[1C][2A][3A][4][5A]This is the first time we have considered a claim that a sex offender registration and notification law constitutes retroactive punishment forbidden by the *Ex Post Facto* Clause. The framework for **[****16]** our inquiry, however, is well established. We must "ascertain whether the legislature meant the statute to establish **[**1147]** 'civil' proceedings." *Kansas v. Hendricks*, 521 U.S. 346, 361, 138 L. Ed. 2d 501, 117 S. Ct. 2072 (1997). If the intention of the legislature was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, we must further examine whether the statutory scheme is "'so punitive either in purpose or effect as to negate [the State's] intention' to deem it 'civil.'" *Ibid.* (quoting *United States* v. *Ward*, 448 U.S. 242, 248-249, 65 L. Ed. 2d 742, 100 S. Ct. 2636 (1980)). Because we "ordinarily defer to the legislature's stated intent," *Hendricks*, *supra*, at 361, "'only the clearest proof ' will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty," *Hudson* v. *United States*, 522 U.S. 93, 100, 139 L. Ed. 2d 450, 118 S. Ct. 488 (1997) (quoting *Ward*, *supra*, at 249); see also *Hendricks*, *supra*, at 361; *United States* v. *Ursery*, 518 U.S. 267, 290, 135 L. Ed. 2d 549, 116 S.

Ct. 2135 (1996); *United States* v. *One Assortment of 89 Firearms*, 465 U.S. 354, 365, 79 L. Ed. 2d 361, 104 S. Ct. 1099 (1984).

[*177]** A

[**17]** [5B]Whether a statutory scheme is civil or criminal "is first of all a question of statutory construction." *Hendricks*, *supra*, at 361 (internal quotation marks omitted); see also *Hudson*, *supra*, at 99. We consider the statute's text and its structure to determine the legislative objective. *Flemming* v. *Nestor*, 363 U.S. 603, 617, 4 L. Ed. 2d 1435, 80 S. Ct. 1367 (1960).A conclusion that the legislature **[*93]** intended to punish would satisfy an *ex post facto* challenge without further inquiry into its effects, so considerable deference must be accorded to the intent as the legislature has stated it.

[2B] [5C] [6]The courts "must first ask whether the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other." *Hudson*, *supra*, at 99 (internal quotation marks omitted). Here, the Alaska Legislature expressed the objective of the law in the statutory text itself. The legislature found that "sex offenders pose a high risk of reoffending," and identified "protecting the public from sex offenders" as the "primary governmental interest" of the law. 1994 Alaska Sess. Laws ch. 41, § 1. The legislature further determined that "release **[****18]** of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety." *Ibid.* As we observed in *Hendricks*, where we examined an *ex post facto* challenge to a post-incarceration confinement of sex offenders, an imposition of restrictive measures on sex offenders adjudged to be dangerous is "a legitimate nonpunitive governmental objective and has been historically so regarded." 521 U.S., at 363. In this case, as in *Hendricks*, "nothing on the face of the statute suggests that the legislature sought to create anything other than a civil . . . scheme designed to protect the public from harm." *Id.*, at 361.

[2C][7]Respondents seek to cast doubt upon the nonpunitive nature of the law's declared objective by pointing out that the Alaska Constitution lists the need for protecting the public as one of the purposes of criminal administration. Brief for Respondents 23 (citing Alaska Const., Art. I, § 12). As the Court stated in *Flemming* v. *Nestor*, rejecting an *ex post facto* challenge to a law terminating benefits to deported aliens, where a legislative restriction "is an incident of the **[****19]** State's power to protect the health and safety of its citizens," it will be considered "as evidencing an intent to exercise that **[*94]** regulatory power, and not a purpose to add to the punishment." 363 U.S., at 616 (citing *Hawker* v. *New York*, 170 U.S. 189, 42 L. Ed. 1002, 18 S. Ct. 573 (1898)). The Court repeated this principle in *89 Firearms*, upholding a statute requiring **[**1148]** forfeiture of unlicensed firearms against a Double Jeopardy challenge. The Court observed that, in enacting the provision, Congress "'was concerned with the widespread traffic in firearms and with their general availability to those whose possession thereof was contrary to the public interest.'" 465 U.S., at 364 (quoting *Huddleston* v. **[***178]** *United States*, 415 U.S. 814, 824, 39 L. Ed. 2d 782, 94 S. Ct. 1262 (1974)). This goal was "plainly more remedial than punitive." 465 U.S., at 364. These precedents instruct us that even if the objective of the Act is consistent with the purposes of the Alaska criminal justice system, the State's pursuit of it in a regulatory scheme does not make the objective punitive.

[2D][5D]Other formal attributes of a legislative enactment, such as the manner of its codification or the enforcement **[****20]** procedures it establishes, are probative of the legislature's intent. See *Hendricks*, *supra*, at 361;*Hudson, supra,* at 103;*89 Firearms, supra,* at 363. In this case these factors are open to debate. The notification provisions of the Act are codified in the State's "Health, Safety, and Housing Code," § 18, confirming our conclusion that the statute was intended as a nonpunitive regulatory measure. Cf. *Hendricks*, *supra*, at 361 (the State's "objective to create a civil proceeding is evidenced by its placement of the Act within the [State's] probate code, instead of the criminal code" (citations omitted)). The Act's registration provisions, however, are codified in the State's criminal procedure code, and so might seem to point in the opposite direction. These factors, though, are not dispositive. The location and labels of a statutory provision do not by themselves transform a civil remedy into a criminal one. In *89 Firearms*, the Court held a forfeiture provision to be a civil sanction even though the authorizing statute was in the criminal code. 465 U.S., at 364-365. **[*95]** The Court rejected the argument that **[****21]** the placement demonstrated Congress"'intention to create an additional criminal sanction," observing that "both criminal and civil sanctions may be labeled 'penalties.'" *Id.*, at 364, n. 6.

[2E][8]The same rationale applies here. Title 12 of Alaska's Code of Criminal Procedure (where the Act's registration provisions are located) contains many provisions that do not involve criminal punishment, such as civil procedures for disposing of recovered and seized property, Alaska Stat. § 12.36.010 *et seq.* (2000); laws protecting the confidentiality of victims and witnesses, § 12.61.010 *et seq.;* laws governing the security and accuracy of criminal justice information, § 12.62.110 *et seq.;* laws governing civil postconviction actions, § 12.72.010 *et seq.;* and laws governing actions for writs of habeas corpus, § 12.75.010 *et seq.*, which under Alaska law are "independent civil proceedings," *State* v. *Hannagan*, 559 P.2d 1059, 1063 (Alaska 1977).Although some of these provisions relate to criminal administration, they are not in themselves punitive. The partial codification of the Act in the State's criminal procedure code is not sufficient **[****22]** to support a conclusion that the legislative intent was punitive.

[2F]The procedural mechanisms to implement the Act do not alter our conclusion. After the Act's adoption Alaska amended its Rules of Criminal Procedure concerning the acceptance of pleas and the entering of criminal judgments. The rule on pleas now requires the court to "inform the defendant in writing of the requirements of [the Act] and, if **[***179]** it can be determined by the court, the period of registration required." Alaska Rule Crim. Proc. 11(c)(4). Similarly, the written judgments for sex offenses and child kidnapings "must set out the requirements of [the Act] and, if it can be determined by the court, whether that conviction will require the offender or kidnapper to register **[**1149]** for life or a lesser period." Alaska Stat. § 12.55.148(a).

[2G] [9]The policy to alert convicted offenders to the civil consequences of their criminal conduct does not render the consequences **[*96]** themselves punitive. When a State sets up a regulatory scheme, it is logical to provide those persons subject to it with clear and unambiguous notice of the requirements and the penalties for noncompliance. The Act requires registration either before the offender's **[****23]** release from confinement or within a day of his conviction (if the offender is not imprisoned). Timely and adequate notice serves to apprise individuals of their responsibilities and to ensure compliance with the regulatory scheme. Notice is important, for the scheme is enforced by criminal penalties. See §§ 11.56.835, 11.56.840. Although other methods of notification may be available, it is effective to make it part of the plea colloquy or the judgment of conviction. Invoking the criminal process in aid of a statutory regime does not render the statutory scheme itself punitive.

[2H]Our conclusion is strengthened by the fact that, aside from the duty to register, the statute itself mandates no procedures. Instead, it vests the authority to promulgate implementing regulations with the Alaska Department of Public Safety, §§ 12.63.020(b), 18.65.087(d) -- an agency charged with enforcement of both criminal *and* civil regulatory laws. See, *e.g.,* § 17.30.100 (enforcement of drug laws); § 18.70.010 (fire protection); § 28.05.011 (motor vehicles and road safety); § 44.41.020 (protection of life and property). The Act itself does not require the procedures adopted to contain any safeguards **[****24]** associated with the criminal process. That leads us to infer that the legislature envisioned the Act's implementation to be civil and administrative. By contemplating "distinctly civil procedures," the legislature "indicated clearly that it intended a civil, not a criminal sanction." *Ursery*, 518 U.S., at 289 (internal quotation marks omitted; alteration in original).

[1D][2I]We conclude, as did the District Court and the Court of Appeals, that the intent of the Alaska Legislature was to create a civil, nonpunitive regime.

[*97] B

[1E][3B][10A]In analyzing the effects of the Act we refer to the seven factors noted in *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 168-169, 9 L. Ed. 2d 644, 83 S. Ct. 554 (1963), as a useful framework. These factors, which migrated into our *ex post facto* case law from double jeopardy jurisprudence, have their earlier origins in cases under the Sixth and Eight Amendments, as well as the Bill of Attainder and the *Ex Post Facto* Clauses. See *id.,* at 168-169, and nn. 22-28. Because the *Mendoza-Martinez* factors are designed to apply in various constitutional contexts, we have said they are "neither exhaustive nor dispositive," *United States* v. *Ward*, 448 U.S., at 249; **[****25]** *89 Firearms, supra,* at 365, n. 7, **[***180]** but are "useful guideposts," *Hudson*, 522 U.S., at 99. The factors most relevant to our analysis are whether, in its necessary operation, the regulatory scheme: has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose.

[3C][11]A historical survey can be useful because a State that decides to punish an individual is likely to select a means deemed punitive in our tradition, so that the public will recognize it as such. The Court of Appeals observed that the sex offender registration and notification statutes "are of fairly recent origin," 259 F.3d at 989, which suggests that the statute was not meant as a punitive measure, or, at least, that it did not involve a traditional means of punishing. Respondents argue, **[**1150]** however, that the Act -- and, in particular, its notification provisions -- resemble shaming punishments of the colonial period. Brief for Respondents 33-34 (citing A. Earle, Curious Punishments of Bygone Days 1-2 (1896)).

[**26]** [3D]Some colonial punishments indeed were meant to inflict public disgrace. Humiliated offenders were required "to stand in public with signs cataloguing their offenses." Hirsh, From Pillory to Penitentiary: The Rise of Criminal **[*98]** Incarceration in Early Massachusetts, 80 Mich. L. Rev. 1179, 1226 (1982); see also L. Friedman, Crime and Punishment in American History 38 (1993). At times the labeling would be permanent: A murderer might be branded with an "M," and a thief with a "T." R. Semmes, Crime and Punishment in Early Maryland 35 (1938); see also Massaro, Shame, Culture, and American Criminal Law, 89 Mich. L. Rev. 1880, 1913 (1991). The aim was to make these offenders suffer "permanent stigmas, which in effect cast the person out of the community." Massaro, *supra,* at 1913; see also Friedman, *supra*, at 40; Hirsh*, supra*, at 1228. The most serious offenders were banished, after which they could neither return to their original community nor, reputation tarnished, be admitted easily into a new one. T. Blomberg & K. Lucken, American Penology: A History of Control 30-31 (2000). Respondents contend that Alaska's compulsory registration and notification **[****27]** resemble these historical punishments, for they publicize the crime, associate it with his name, and, with the most serious offenders, do so for life.

[3E] [12]Any initial resemblance to early punishments is, however, misleading. Punishments such as whipping, pillory, and branding inflicted physical pain and staged a direct confrontation between the offender and the public. Even punishments that lacked the corporal component, such as public shaming, humiliation, and banishment, involved more than the dissemination of information. They either held the person up before his fellow citizens for face-to-face shaming or expelled him from the community. See Earle, *supra*, at 20, 35-36, 51-52; Massaro, *supra*, at 1912-1924; Semmes, *supra*, at 39-40; Blomberg & Lucken, *supra*, at 30-31. By contrast, the stigma of Alaska's Megan's Law results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, **[***181]** most of which is already public. Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment. On the contrary, **[*99]** our criminal law tradition insists on public **[****28]** indictment, public trial, and public imposition of sentence. Transparency is essential to maintaining public respect for the criminal justice system, ensuring its integrity, and protecting the rights of the accused. The publicity may cause adverse consequences for the convicted defendant, running from mild personal embarrassment to social ostracism. In contrast to the colonial shaming punishments, however, the State does not make the publicity and the resulting stigma an integral part of the objective of the regulatory scheme.

[3F]The fact that Alaska posts the information on the Internet does not alter our conclusion. It must be acknowledged that notice of a criminal conviction subjects the offender to public shame, the humiliation increasing in proportion to the extent of the publicity. And the geographic reach of the Internet is greater than anything which could have been designed in colonial times. These facts do not render Internet notification punitive. The purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation **[****29]** is but a collateral consequence of a valid regulation.

The State's Web site does not provide the public with means to shame the offender by, say, posting comments underneath **[**1151]** his record. An individual seeking the information must take the initial step of going to the Department of Public Safety's Web site, proceed to the sex offender registry, and then look up the desired information. The process is more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality. The Internet makes the document search more efficient, cost effective, and convenient for Alaska's citizenry.

[3G][13]We next consider whether the Act subjects

respondents to an "affirmative disability or restraint." *Mendoza-Martinez*, 372 U.S., at 168.Here, we inquire how the effects of the **[*100]** Act are felt by those subject to it. If the disability or restraint is minor and indirect, its effects are unlikely to be punitive.

The Act imposes no physical restraint, and so does not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint. *Hudson*, 522 U.S., at 104. **[****30]** The Act's obligations are less harsh than the sanctions of occupational debarment, which we have held to be nonpunitive. See *ibid.* (forbidding further participation in the banking industry); *De Veau* v. *Braisted*, 363 U.S. 144, 4 L. Ed. 2d 1109, 80 S. Ct. 1146 (1960) (forbidding work as a union official), *Hawker* v. *New York*, 170 U.S. 189, 42 L. Ed. 1002, 18 S. Ct. 573 (1898) (revocation of a medical license). The Act does not restrain activities sex offenders may pursue but leaves them free to change jobs or residences.

[3H]The Court of Appeals sought to distinguish *Hawker* and cases which have followed it on the grounds that the disability at issue **[***182]** there was specific and "narrow," confined to particular professions, whereas "the procedures employed under the Alaska statute are likely to make [respondents] *completely unemployable*" because "employers will not want to risk loss of business when the public learns that they have hired sex offenders." 259 F.3d at 988. This is conjecture. Landlords and employers could conduct background checks on the criminal records of prospective employees or tenants even with the Act not in force. The record in this case contains no evidence that the Act **[****31]** has led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred through the use of routine background checks by employers and landlords. The Court of Appeals identified only one incident from the 7-year history of Alaska's law where a sex offender suffered community hostility and damage to his business after the information he submitted to the registry became public. *Id.,* at 987-988. This could have occurred in any event, because the information about the individual's conviction was already in the public domain.

[*101] Although the public availability of the information may have a lasting and painful impact on the convicted sex offender, these consequences flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record. The State makes the facts underlying the offenses and the resulting convictions accessible so members of the public can take the precautions they deem necessary before dealing with the registrant.

The Court of Appeals reasoned that the requirement of periodic updates imposed an affirmative disability. In reaching this conclusion, **[****32]** the Court of Appeals was under a misapprehension, albeit one created by the State itself during the argument below, that the offender had to update the registry in person. *Id.,* at 984, n. 4. The State's representation was erroneous. The Alaska statute, on its face, does not require these updates to be made in person. And, as respondents conceded at the oral argument before us, the record contains no indication that an in-person appearance requirement has been imposed on any sex offender subject to the Act. Tr. of Oral Arg. 26-28.

[1152]** The Court of Appeals held that the registration system is parallel to probation or supervised release in terms of the restraint imposed. 259 F.3d at 987. This argument has some force, but, after due consideration, we reject it. Probation and supervised release entail a series of mandatory conditions and allow the supervising officer to seek the revocation of probation or release in case of infraction. See generally *Johnson* v. *United States*, 529 U.S. 694, 146 L. Ed. 2d 727, 120 S. Ct. 1795 (2000); *Griffin* v. *Wisconsin*, 483 U.S. 868, 97 L. Ed. 2d 709, 107 S. Ct. 3164 (1987). By contrast, offenders subject to the Alaska statute are free to move where they wish **[****33]** and to live and work as other citizens, with no supervision. Although registrants must inform the authorities after they change their facial features (such as growing a beard), borrow a car, or seek psychiatric treatment, they are not required to seek permission to do so. A sex offender **[*102]** who fails to comply with the reporting requirement may be subjected to a criminal prosecution for that failure, but any prosecution is a proceeding separate **[***183]** from the individual's original offense. Whether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved, are concerns beyond the scope of this opinion. It suffices to say the registration requirements make a valid regulatory program effective and do not impose punitive restraints in violation of the *Ex Post Facto* Clause.

The State concedes that the statute might deter future crimes. Respondents seize on this proposition to argue that the law is punitive, because deterrence is one purpose of punishment. Brief for Respondents 37. This proves too much. Any number of governmental

programs might deter crime without imposing punishment. "To hold that the mere presence of a deterrent **[****34]** purpose renders such sanctions 'criminal' . . . would severely undermine the Government's ability to engage in effective regulation." *Hudson*, 522 U.S., at 105; see also *Ursery*, 518 U.S., at 292; *89 Firearms*, 465 U.S., at 364.

The Court of Appeals was incorrect to conclude that the Act's registration obligations were retributive because "the length of the reporting requirement appears to be measured by the extent of the wrongdoing, not by the extent of the risk posed." 259 F.3d at 990. The Act, it is true, differentiates between individuals convicted of aggravated or multiple offenses and those convicted of a single nonaggravated offense. Alaska Stat. § 12.63.020(a)(1) (2000). The broad categories, however, and the corresponding length of the reporting requirement, are reasonably related to the danger of recidivism, and this is consistent with the regulatory objective.

[3I]

[14A] The Act's rational connection to a nonpunitive purpose is a "most significant" factor in our determination that the statute's effects are not punitive. *Ursery, supra*, at 290.As the Court of Appeals acknowledged, the Act has a legitimate **[*103]** nonpunitive **[****35]** purpose of "public safety, which is advanced by alerting the public to the risk of sex offenders in their community." 259 F.3d at 991. Respondents concede, in turn, that "this alternative purpose is valid, and rational." Brief for Respondents 38. They contend, however, that the Act lacks the necessary regulatory connection because it is not "narrowly drawn to accomplish the stated purpose." *Ibid.* A statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance. The imprecision respondents rely upon does not suggest that the Act's nonpunitive purpose is a "sham or mere pretext." *Hendricks*, 521 U.S., at 371 (KENNEDY, J., concurring).

[3J]In concluding the Act was excessive in relation to its regulatory purpose, the Court of Appeals relied in large part on two propositions: first, that the statute **[**1153]** applies to all convicted sex offenders without regard to their future dangerousness; and, second, that it places no limits on the number of persons who have access to the information. 259 F.3d at 991-992.Neither argument is persuasive.

Alaska could conclude that a conviction for a sex offense **[****36]** provides evidence of substantial risk of recidivism. The legislature's findings are **[***184]** consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is "frightening and high." *McKune* v. *Lile*, 536 U.S. 24, 34, 153 L. Ed. 2d 47, 122 S. Ct. 2017 (2002); see also *id.*, at 33 ("When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault") (citing U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 27 (1997); U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997)).

[3K][15]The *Ex Post Facto* Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences. **[*104]** We have upheld against *ex post facto* challenges laws imposing regulatory burdens on individuals convicted of crimes without any corresponding risk assessment. See *De Veau*, 363 U.S. at 160; *Hawker*, 170 U.S., at 197. As stated **[****37]** in *Hawker:* "Doubtless, one who has violated the criminal law may thereafter reform and become in fact possessed of a good moral character. But the legislature has power in cases of this kind to make a rule of universal application . . . ." *Ibid.* The State's determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment under the *Ex Post Facto* Clause.

[3L]Our decision in *Hendricks*, on which respondents rely, Brief for Respondents 39, is not to the contrary. The State's objective in *Hendricks* was involuntary (and potentially indefinite) confinement of "particularly dangerous individuals." 521 U.S., at 357-358, 364.The magnitude of the restraint made individual assessment appropriate. The Act, by contrast, imposes the more minor condition of registration. In the context of the regulatory scheme the State can dispense with individual predictions of future dangerousness and allow the public to assess the risk on the basis of accurate, nonprivate information about the registrants' convictions without violating the prohibitions of the **[****38]** *Ex Post Facto* Clause.

The duration of the reporting requirements is not excessive. Empirical research on child molesters, for instance, has shown that, "contrary to conventional wisdom, most reoffenses do not occur within the first several years after release," but may occur "as late as 20 years following release." R. Prentky, R. Knight, and A. Lee, U.S. Dept. of Justice, National Institute of Justice, Child Sexual Molestation: Research Issues 14 (1997).

The Court of Appeals' reliance on the wide dissemination of the information is also unavailing. The Ninth Circuit **[*105]** highlighted that the information was available "world-wide" and "broadcas[t]" in an indiscriminate manner. 259 F.3d at 992. As we have explained, however, the notification system is a passive one: An individual must seek access to the information. The Web site warns that the use of displayed information "to commit a criminal act against another person is subject to criminal prosecution **[***185]** ." http://www.dps.state.ak.us/nSorcr/asp/ (as visited Jan. 17, 2003) (available in the Clerk of Court's case file). Given the general mobility of our population, for Alaska to make its registry system available and easily **[****39]** accessible throughout the State was not so excessive a regulatory requirement as to become a punishment. See D. Schram & **[**1154]** C. Milloy, Community Notification: A Study of Offender Characteristics and Recidivism 13 (1995) (38% of recidivist sex offenses in the State of Washington took place in jurisdictions other than where the previous offense was committed).

[3M] [14B]The excessiveness inquiry of our *ex post facto* jurisprudence is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy. The question is whether the regulatory means chosen are reasonable in light of the nonpunitive objective. The Act meets this standard.

[3N] [10B]The two remaining *Mendoza-Martinez* factors -- whether the regulation comes into play only on a finding of scienter and whether the behavior to which it applies is already a crime -- are of little weight in this case. The regulatory scheme applies only to past conduct, which was, and is, a crime. This is a necessary beginning point, for recidivism is the statutory concern. The obligations the statute imposes are the responsibility of registration, a duty not predicated upon some present or repeated **[****40]** violation.

[1F] [3O]Our examination of the Act's effects leads to the determination that respondents cannot show, much less by the clearest proof, that the effects of the law negate Alaska's intention to establish a civil regulatory scheme. The Act is nonpunitive, **[*106]** and its retroactive application does not violate the *Ex Post Facto* Clause. The judgment of the Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Concur by: THOMAS; SOUTER

Concur

JUSTICE THOMAS, concurring.

I join the Court's opinion upholding the Alaska Sex Offender Registration Act (ASORA) against *ex post facto* challenge. I write separately, however, to reiterate that "there is no place for [an implementation-based] challenge" in our *ex post facto* jurisprudence. *Seling* v. *Young*, 531 U.S. 250, 273, 148 L. Ed. 2d 734, 121 S. Ct. 727 (2001) (THOMAS, J., concurring in judgment). Instead, the determination whether a scheme is criminal or civil must be limited to the analysis of the obligations actually created by statute. See *id.*, at 273-274 *("*To the extent that the conditions result from the fact that the statute **[****41]** is not being applied according to its terms, the conditions are *not* the effect of the statute, but rather the effect of its improper implementation"). As we have stated, the categorization of a proceeding as civil or criminal is accomplished by examining "the statute on its face." *Hudson* v. *United States*, 522 U.S. 93, 100, 139 L. Ed. 2d 450, 118 S. Ct. 488 (1997) (internal quotation marks omitted).

In this case, ASORA does not **[***186]** specify a means of making registry information available to the public. It states only that

"information about a sex offender . . . that is contained in the central registry . . . is confidential and not subject to public disclosure except as to the sex offender's . . . name, aliases, address, photograph, physical description, description of motor vehicles, license numbers of motor vehicles, and vehicle identification numbers of motor vehicles, place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, length and conditions of sentence, and a **[*107]** statement as to whether the offender . . . is in compliance with requirements of AS 12.63 or cannot be located." Alaska Stat. § 18.65.087(b)

(1999).

By considering whether **[****42]** Internet dissemination renders ASORA punitive, the Court has strayed from the statute. With this qualification, I concur.

JUSTICE SOUTER, concurring in the judgment.

I agree with the Court that Alaska's Sex Offender Registration Act does not amount to an *ex post facto* law. But the majority comes to that conclusion by a different **[**1155]** path from mine, and I concur only in the judgment.

As the Court says, our cases have adopted a two-step enquiry to see whether a law is punitive for purposes of various constitutional provisions including the *Ex Post Facto* Clause. At the first step in applying the so-called *Kennedy-Ward* test, we ask whether the legislature intended a civil or criminal consequence; at the second, we look behind the legislature's preferred classification to the law's substance, focusing on its purpose and effects. See *United States* v. *Ward*, 448 U.S. 242, 248-249, 65 L. Ed. 2d 742, 100 S. Ct. 2636 (1980); *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 168-169, 9 L. Ed. 2d 644, 83 S. Ct. 554 (1963). We have said that "only the clearest proof" that a law is punitive based on substantial factors will be able to overcome the legislative categorization. *Ward*, *supra*, at 249 (quoting **[****43]** *Flemming* v. *Nestor*, 363 U.S. 603, 617, 4 L. Ed. 2d 1435, 80 S. Ct. 1367 (1960)). I continue to think, however, that this heightened burden makes sense only when the evidence of legislative intent clearly points in the civil direction. See *Hudson* v. *United States*, 522 U.S. 93, 113-114, 139 L. Ed. 2d 450, 118 S. Ct. 488 (1997) (SOUTER, J., concurring in judgment). This means that for me this is a close case, for I not only agree with the Court that there is evidence pointing to an intended civil characterization of the Act, but also see considerable evidence pointing the other way.

The Act does not expressly designate the requirements imposed as "civil," a fact that itself makes this different from **[*108]** our past cases, which have relied heavily on the legislature's stated label in finding a civil intent. See *Hudson*, *supra*, at 103; *Kansas* v. *Hendricks*, 521 U.S. 346, 361, 138 L. Ed. 2d 501, 117 S. Ct. 2072 (1997); *Allen* v. *Illinois*, 478 U.S. 364, 368, 92 L. Ed. 2d 296, 106 S. Ct. 2988 (1986). The placement of the Act in the State's code, another important indicator, see *Hendricks*, *supra*, at 361, also leaves matters in the air, for although **[***187]** the section establishing the registry is among the code's health and safety provisions, **[****44]** which are civil, see Alaska Stat. § 18.65.087 (2000), the section requiring registration occurs in the title governing criminal procedure, see § 12.63.010. What is more, the legislature made written notification of the requirement a necessary condition of any guilty plea, see Alaska Rule Crim. Proc. 11(c)(4) (2002), and, perhaps most significant, it mandated a statement of the requirement as an element of the actual judgment of conviction for covered sex offenses, see Alaska Stat. § 12.55.148; Alaska Rule Crim. Proc. 32(c) (2002). Finally, looking to enforcement, see *Hudson*, *supra*, at 103, offenders are obliged, at least initially, to register with state and local police, see §§ 12.63.010(b), (c), although the actual information so obtained is kept by the State's Department of Public Safety, a regulatory agency, see § 18.65.087(a). These formal facts do not force a criminal characterization, but they stand in the way of asserting that the statute's intended character is clearly civil.

The substantial indicators relevant at step two of the *Kennedy-Ward* analysis likewise point in different directions. To start with purpose, the Act's legislative history shows it **[****45]** was designed to prevent repeat sex offenses and to aid the investigation of reported offenses. See 1994 Alaska Sess. Laws ch. 41, § 1; Brief for Petitioners 26, n. 13. Ensuring public safety is, of course, a fundamental regulatory goal, see, *e.g.*, *United States* v. *Salerno*, 481 U.S. 739, 747, 95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987), and this objective should be given serious weight in the analyses. But, at the same time, it would be naive to look no **[*109]** further, given pervasive attitudes toward sex offenders, see *infra*, at 4, n. See *Weaver* v. *Graham*, 450 U.S. 24, 29, 67 L. Ed. 2d 17, 101 S. Ct. 960 (1981) *(Ex Post Facto* Clause was meant to prevent "arbitrary and potentially vindictive legislation"). The fact that the Act uses past crime as the touchstone, probably **[**1156]** sweeping in a significant number of people who pose no real threat to the community, serves to feed suspicion that something more than regulation of safety is going on; when a legislature uses prior convictions to impose burdens that outpace the law's stated civil aims, there is room for serious argument that the ulterior purpose is to revisit past crimes, not prevent future ones. See *Kennedy*, *supra*, at 169.

That argument **[****46]** can claim support, too, from the severity of the burdens imposed. Widespread dissemination of offenders' names, photographs, addresses, and criminal history serves not only to inform the public but also to humiliate and ostracize the convicts. It thus bears some resemblance to shaming punishments that were used earlier in our history to

disable offenders from living normally in the community. See, *e.g.*, Massaro, Shame, Culture, and American Criminal Law, 89 Mich. L. Rev. 1880, 1913 (1991). While the Court accepts the State's explanation that the Act simply makes public information available in a new way, *ante*, at 11, the scheme does much more. Its point, after all, is to send a message that probably would not otherwise be heard, by selecting some conviction information out of its corpus of penal records and broadcasting it with a warning. **[***188]** Selection makes a statement, one that affects common reputation and sometimes carries harsher consequences, such as exclusion from jobs or housing, harassment, and physical harm. *

[**47]** **[*110]** To me, the indications of punitive character stated above and the civil indications weighed heavily by the Court are in rough equipoise. Certainly the formal evidence of legislative intent does not justify requiring the "clearest proof" of penal substance in this case, see *Hudson*, 522 U.S., at 113-114 (SOUTER, J., concurring in judgment), and the substantial evidence does not affirmatively show with any clarity that the Act is valid. What tips the scale for me is the presumption of constitutionality normally accorded a State's law. That presumption gives the State the benefit of the doubt in close cases like this one, and on that basis alone I concur in the Court's judgment.

Dissent by: STEVENS; GINSBURG

Dissent

JUSTICE STEVENS, dissenting in No. 01-729 and concurring in the judgment in No. 01-1231. *

These two cases raise questions about statutes that impose affirmative obligations **[****48]** on convicted sex offenders. The question in No. 01-729 is whether the Alaska Sex Offender Registration Act is an **[**1157]** *ex post facto* law, and in No. 01-1231 **[*111]** it is whether Connecticut's similar law violates the Due Process Clause.

The Court's opinions in both cases fail to decide whether the statutes deprive the registrants of a constitutionally protected interest in liberty. If no liberty interest were implicated, it seems clear that neither statute would raise a colorable constitutional claim. Cf. *Meachum* v. *Fano,* 427 U.S. 215, 49 L. Ed. 2d 451, 96 S. Ct. 2532 (1976). Proper analysis of both cases should therefore begin with a consideration of the impact of the statutes on the registrants' freedom.

The statutes impose significant affirmative obligations and a severe stigma on every person to whom they apply. In Alaska, an offender who has served his sentence for a single, nonaggravated crime must provide local law enforcement authorities with extensive personal information **[***189]** -- including his address, his place of employment, the address of his employer, the license plate number and make and model of any car to which he has access, a current photo, identifying features, and medical treatment -- at **[****49]** least once a year for 15 years. If one has been convicted of an aggravated offense or more than one offense, he must report this same information at least quarterly for life. Moreover, if he moves, he has *one* working day to provide updated information. Registrants may not shave their beards, color their hair, change their employer, or borrow a car without reporting those events to the authorities. Much of this registration information is

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* I seriously doubt that the Act's requirements are "less harsh than the sanctions of occupational debarment" that we upheld in *Hudson* v. *United States*, 522 U.S. 93, 139 L. Ed. 2d 450, 118 S. Ct. 488 (1997), *De Veau* v. *Braisted*, 363 U.S. 144, 4 L. Ed. 2d 1109, 80 S. Ct. 1146 (1960), and *Hawker* v. *New York*, 170 U.S. 189, 42 L. Ed. 1002, 18 S. Ct. 573 (1898). See *ante*, at 12-13. It is true that the Act imposes no formal proscription against any particular employment, but there is significant evidence of onerous practical effects of being listed on a sex offender registry. See, *e.g.*, Doe v. Pataki , 120 F.3d 1263, 1279 (CA2 1997) (noting "numerous instances in which sex offenders have suffered harm in the aftermath of notification -- ranging from public shunning, picketing, press vigils, ostracism, loss of employment, and eviction, to threats of violence, physical attacks, and arson"); *E.B.* v. *Verniero*, 119 F.3d 1077, 1102 (CA3 1997) ("The record documents that registrants and their families have experienced profound humiliation and isolation as a result of the reaction of those notified. Employment and employment opportunities have been jeopardized or lost. Housing and housing opportunities have suffered a similar fate. Family and other personal relationships have been destroyed or severely strained. Retribution has been visited by private, unlawful violence and threats and, while such incidents of 'vigilante justice' are not common, they happen with sufficient frequency and publicity that registrants justifiably live in fear of them"); Brief for the Office of the Public Defender for the State of New Jersey et al. as *Amici Curiae* 7-21 (describing specific incidents).

* [This opinion applies also to No. 01-1231, *Connecticut Dept. of Public Safety* v. *Doe*, *ante* 538 U.S. 1, 155 L. Ed. 2d 98, 123 S. Ct. 1160, 2003 U.S. LEXIS 1951 (March 5, 2003), p. -- .]

placed on the Internet. In Alaska, the registrant's face appears on a webpage under the label "Registered Sex Offender." His physical description, street address, employer address, and conviction information are also displayed on this page.

The registration and reporting duties imposed on convicted sex offenders are comparable to the duties imposed on other convicted criminals during periods of supervised release or parole. And there can be no doubt that the "widespread public access," *ante*, at 12 (opinion in No. 01-729), **[*112]** to this personal and constantly updated information has a severe stigmatizing effect. See Brief for the Office of the Public Defender for the State of New Jersey et al. as *Amici Curiae* 7-21 (providing examples of threats, **[****50]** assaults, loss of housing, and loss of jobs experienced by sex offenders after their registration information was made widely available). In my judgment, these statutes unquestionably affect a constitutionally protected interest in liberty. Cf. *Wisconsin* v. *Constantineau*, 400 U.S. 433, 27 L. Ed. 2d 515, 91 S. Ct. 507 (1971).

It is also clear beyond peradventure that these unique consequences of conviction of a sex offense are punitive. They share three characteristics, which in the aggregate are not present in any civil sanction. The sanctions (1) constitute a severe deprivation of the offender's liberty, (2) are imposed on everyone who is convicted of a relevant criminal offense, and (3) are imposed only on those criminals. Unlike any of the cases that the Court has cited, a criminal conviction under these statutes provides both a *sufficient* and a *necessary* condition for the sanction.

To be sure, there are cases in which we have held that it was not punishment and thus not a violation of the *Ex Post Facto* Clause to deny future privileges to individuals who were convicted of crimes. See, *e.g.*, *De Veau* v. *Braisted*, 363 U.S. 144, 4 L. Ed. 2d 1109, 80 S. Ct. 1146 (1960) (upholding prohibition **[****51]** of convicted felons from working for waterfront unions); *Hawker* v. *New York*, 170 U.S. 189, 42 L. Ed. 1002, 18 S. Ct. 573 (1898) (upholding prohibition of doctors who had been convicted of a felony from practicing medicine). Those cases are distinguishable because in each the prior conviction was a sufficient condition for the imposition of the burden, but it was not a necessary one. That is, one may be barred from participation in a union because he has not paid fines imposed on **[**1158]** him. See *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 191-192, 18 L. Ed. 2d 1123, 87 S. Ct. 2001 (1967). And a doctor may not be permitted to practice medicine because she is no longer competent to do so. See, *e.g.,* N. J. Stat. Ann. § 45:1-21 (West Supp. 2002).

[*190]** **[*113]** Likewise, in *Kansas* v. *Hendricks*, 521 U.S. 346, 138 L. Ed. 2d 501, 117 S. Ct. 2072 (1997), the Court held that a law that permitted the civil commitment of persons who had committed or had been charged with a sexually violent offense was not an *ex post facto* law. But the fact that someone had been convicted was not sufficient to authorize civil commitment under Kansas law because Kansas required another proceeding to determine if such a person suffered from a '"mental abnormality **[****52]** or personality disorder which makes the person likely to engage in the predatory acts of sexual violence.'" *Id.,* at 352. Nor was the conviction even a necessary predicate for the commitment. See *ibid.* (Kansas' civil commitment procedures also applied to individuals charged with a sexually violent offense but found incompetent to stand for trial, or found not guilty by reason of insanity or by reason of mental disease or defect). While one might disagree in other respects with *Hendricks*, it is clear that a conviction standing alone did not make anyone eligible for the burden imposed by that statute.

No matter how often the Court may repeat and manipulate multifactor tests that have been applied in wholly dissimilar cases involving only one or two of these three aspects of these statutory sanctions, it will never persuade me that the registration and reporting obligations that are imposed on convicted sex offenders *and on no one else* as a result of their convictions are not part of their punishment. In my opinion, a sanction that (1) is imposed on everyone who commits a criminal offense, (2) is not imposed on anyone else, and (3) severely impairs a person's **[****53]** liberty is punishment.

It is therefore clear to me that the Constitution prohibits the addition of these sanctions to the punishment of persons who were tried and convicted before the legislation was enacted. As the Court recognizes, "recidivism is the statutory concern" that provides the supposed justification for the imposition of such retroactive punishment. *Ante*, at 18 (opinion in No. 01-729). That is the principal rationale that underlies the "three strikes" statute that the Court has upheld **[*114]** in *Ewing* v. *California*, -- U.S. -- (2003). Reliance on that rationale here highlights the conclusion that the retroactive application of these statutes constitutes a flagrant violation of the protections afforded by the Double Jeopardy and *Ex Post Facto* Clauses of the

Constitution.

I think it equally clear, however, that the State may impose registration duties and may publish registration information as a part of its punishment of this category of defendants. Looking to the future, these aspects of their punishment are adequately justified by two of the traditional aims of punishment -- retribution and deterrence. Moreover, as a matter of procedural fairness, Alaska requires **[****54]** its judges to include notice of the registration requirements in judgments imposing sentences on convicted sex offenders and in the colloquy preceding the acceptance of a plea of guilty to such an offense. See Alaska Rules Crim. Proc. 11(c)(4) and 32(c) (2002). Thus, I agree with the Court that these statutes are constitutional as applied to postenactment offenses.

Accordingly, I would hold that the **[***191]** Alaska statute violates the constitutional prohibition on *ex post facto* laws. Because I believe registration and publication are a permissible component of the punishment for this category of crimes, however, for those convicted of offenses committed after the effective date of such legislation, there would be no separate procedural due process violation so long as a defendant is provided a constitutionally adequate trial. **[**1159]** I therefore concur in the Court's disposition of the Connecticut case, No. 01-1231, and I respectfully dissent from its disposition of the Alaska case, No. 01-729.

JUSTICE GINSBURG, with whom JUSTICE BREYER joins, dissenting.

As JUSTICE SOUTER carefully explains, it is unclear whether the Alaska Legislature conceived of the State's Sex Offender Registration Act **[****55]** as a regulatory measure or as a **[*115]** penal law. See *ante*, at 1-2 (opinion concurring in judgment). Accordingly, in resolving whether the Act ranks as penal for *ex post facto* purposes, I would not demand "the clearest proof" that the statute is in effect criminal rather than civil. Instead, guided by *Kennedy* v. *Mendoza-Martinez,* 372 U.S. 144, 9 L. Ed. 2d 644, 83 S. Ct. 554 (1963), I would neutrally evaluate the Act's purpose and effects. See *id*., at 168-169 (listing seven factors courts should consider "absent conclusive evidence of [legislative] intent as to the penal nature of a statute"); cf. *Hudson* v. *United States,* 522 U.S. 93, 115, 139 L. Ed. 2d 450, 118 S. Ct. 488 (1997) (BREYER, J., concurring in judgment) ("In fact if not in theory, the Court has simply applied factors of the *Kennedy* variety to the matter at hand."). [1]

[**56]** Measured by the *Mendoza-Martinez* factors, I would hold Alaska's Act punitive in effect. Beyond doubt, the Act involves an "affirmative disability or restraint." 372 U.S., at 168. As JUSTICE STEVENS and JUSTICE SOUTER spell out, Alaska's Act imposes onerous and intrusive obligations on convicted sex offenders; and it exposes registrants, through aggressive public notification of their crimes, to profound humiliation and community-wide ostracism. See *ante*, at 3-4, and n. (SOUTER, J., concurring in judgment); *ante*, at 1-2 (STEVENS, J., dissenting in No. 01-729 and concurring in judgment in No. 01-1231).

Furthermore, the Act's requirements resemble historically common forms of punishment. See *Mendoza-Martinez*, 372 U.S., at 168. Its registration and reporting provisions are comparable to conditions of supervised release or parole; its **[*116]** public notification regimen, which permits placement of the registrant's face on a webpage under the label "Registered Sex Offender," calls to mind shaming punishments once used to mark an offender as **[***192]** someone to be shunned. See *ante*, at 2 (STEVENS, J., dissenting in No. 01-729 and concurring in judgment in No. **[****57]** 01-1231); *ante*, at 3 (SOUTER, J., concurring in judgment).

Telling too, as JUSTICE SOUTER observes, past crime alone, not current dangerousness, is the "touchstone" triggering the Act's obligations. *Ante*, at 3 (opinion concurring in judgment); see *ante*, at 2-4 (STEVENS, J., dissenting in No. 01-729 and concurring in judgment in No. 01-1231). This touchstone adds to the impression that the Act retributively targets past guilt, *i.e.*, that it "revisits past crimes [more than it] prevents future ones." *Ante*, at 3 (SOUTER, J., concurring in judgment); see *Mendoza-Martinez*, 372 U.S., at 168.

Tending the other way, I acknowledge, the Court has ranked some laws civil and nonpunitive although they

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[1] The *Mendoza-Martinez* factors include "whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment -- retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative [nonpunitive] purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned." 372 U.S., at 168-169.

impose significant disabilities or restraints. See, *e.g.*, *Flemming* v. *Nestor,* 363 U.S. 603, 4 L. Ed. 2d 1435, 80 S. Ct. 1367 (1960) (termination of accrued disability benefits payable to deported resident aliens); *Kansas* v. *Hendricks,* **[**1160]** 521 U.S. 346, 138 L. Ed. 2d 501, 117 S. Ct. 2072 (1997) (civil confinement of mentally ill sex offenders). The Court has also deemed some laws nonpunitive despite "punitive aspects." See *United States* v. *Ursery,* 518 U.S. 267, 290, 135 L. Ed. 2d 549, 116 S. Ct. 2135 (1996). **[****58]**

What ultimately tips the balance for me is the Act's excessiveness in relation to its nonpunitive purpose. See *Mendoza-Martinez*, 372 U.S., at 169. As respondents concede, see Brief for Respondents 38, the Act has a legitimate civil purpose: to promote public safety by alerting the public to potentially recidivist sex offenders in the community. See *ante*, at 15 (majority opinion). But its scope notably exceeds this purpose. The Act applies to all convicted sex offenders, without regard to their future dangerousness. And the duration of the reporting requirement is keyed not **[*117]** to any determination of a particular offender's risk of reoffending, but to whether the offense of conviction qualified as aggravated. The reporting requirements themselves are exorbitant: The Act requires aggravated offenders to engage in perpetual quarterly reporting, even if their personal information has not changed. See *ante*, at 2. And meriting heaviest weight in my judgment, the Act makes no provision whatever for the possibility of rehabilitation: Offenders cannot shorten their registration or notification period, even on the clearest demonstration of rehabilitation or conclusive **[****59]** proof of physical incapacitation. [2] However plain it may be that a former sex offender currently poses no threat of recidivism, he will remain subject to long-term monitoring and inescapable humiliation.

John Doe I, for example, pleaded *nolo contendere* to a charge of sexual abuse of a minor nine years before **[***193]** the Alaska Act was enacted. He successfully completed a treatment program, and gained early release on supervised probation in part because of his compliance with the program's requirements and his apparent low risk of re-offense. Brief for Respondents 1. He subsequently remarried, established a business, and was reunited with his family. *Ibid*. He was also granted custody **[****60]** of a minor daughter, based on a court's determination that he had been successfully rehabilitated. See *Doe* v. *Otte*, 259 F.3d 979, 983 (CA9 2001). The court's determination rested in part on psychiatric evaluations concluding that Doe had "a very low risk of re-offending" and is "not a pedophile." *Ibid* (internal quotation marks omitted). Notwithstanding this strong evidence of rehabilitation, the Alaska Act requires Doe to report personal information to the State four times per year, and permits the State publicly **[*118]** to label him a "Registered Sex Offender" for the rest of his life.

Satisfied that the Act is ambiguous in intent and punitive in effect, I would hold its retroactive application incompatible with the *Ex Post Facto* Clause, and would therefore affirm the judgment of the Court of Appeals.

References

16B Am Jur 2d, Constitutional Law 657; 21A Am Jur 2d, Criminal Law 926; 53 Am Jur 2d, Mentally Impaired Persons 137, 141

USCS, Constitution, Art I, 10, cl 1

L Ed Digest, Constitutional Law 74, 83

L Ed Index, Abduction and Kidnapping; Children and Minors; Ex Post Facto Laws; Internet; Registration; **[****61]** Sexually Violent Predators

Annotation References:

What constitutes ex post facto law prohibited by ex post facto clauses in Art I, 9, cl 3 and Art I, 10, cl 1 of Federal Constitution--Supreme Court cases. 131 L Ed 2d 1043.

Validity, construction, and application of state statutes authorizing community notification of release of convicted sex offender. 78 ALR5th 489.

End of Document

[2] For the reasons stated by JUSTICE SOUTER, see *ante*, at 4, n. (opinion concurring in judgment), I do not find the Court's citations to *Hawker* v. *New York,* 170 U.S. 189, 42 L. Ed. 1002, 18 S. Ct. 573 (1898), and *De Veau* v. *Braisted,* 363 U.S. 144, 4 L. Ed. 2d 1109, 80 S. Ct. 1146 (1960), see *ante*, at 16-17, convincingly responsive to this point.

Connect With Reedsburg

City of Reedsburg
134 South Locust Street, P.O. Box 490
Reedsburg, WI 53959
Ph. 608-524-6404 Fax. 608-524-8458
www.reedsburgwi.gov

STAFF REPORT AGENDA ITEM: _____

To: Common Council
By: Brian Duvalle, Planning/Building
Date of Meeting: November 25, 2019

Subject: Ordinance 1893-19 – Parking Lot landscaping; 2nd Reading

BACKGROUND AND REQUEST

Currently the Reedsburg zoning ordinance does not include any standard for parking lot landscaping. Adding landscaping improves aesthetics, helps control traffic movement and provides shade in an otherwise completely open area.

Only the new, larger parking lots would be included; it would not be retroactive to include existing parking lots. There are three proposed standards that would be needed to trigger landscaping:

1. More than two aisles
2. 15,000 square feet
3. Two or more rows of parking stalls

The main complaint from parking lot owners against landscaping is the hindrance to snow plowing. But the Plan Commission believes that these alterations are minor enough for the benefits to outweigh this concern.

FINANCIAL IMPACT

NA

STAFF RECOMMENDATION

The Plan Commission recommends approval.

ACTION:

If the Mayor and City Council are ready, the following action may be made:

Motion to approve/deny – 2nd Reading of Ordinance 1893-19.

Attachment(s): Ord 1893-19

ORDINANCE NO. 1893-19
(Parking Lot Landscaping)

The City of Reedsburg, Sauk County, Wisconsin, does hereby ordain as follows:

SECTION 1: PURPOSE.

The purpose of this ordinance is to add standards for the placement of landscaping in certain parking lots.

SECTION II: PROVISION ADDED.

City of Reedsburg Code Section 690-64(I) is hereby created by this Ordinance.

(I)

1. Parking lots or additions to existing parking lots, located in residential, commercial, or industrial districts are to be landscaped around the perimeter. Landscaping can be accomplished with a variety of plants and berms. A variety of tree heights, shrubs and planting materials shall be incorporated into the design to provide visual interest, provided that said trees do not interfere with public utilities.
2. Tree islands, new parking lots. Tree islands, along with other landscaping within open, off-street parking areas, shall be designed to help control circulation of cars and pedestrians, identify entrances and exits, provide reference points for locating cars in large lots, give summer shade to people and cars, furnish open ground for drainage and snow storage, camouflage, soften and improve the appearance of large parking lots, provide environmental and aesthetic benefits and be a positive asset to a shopping area or a business establishment. Any parking lot or parking lot addition constructed after this chapter's effective date that contains all of the following: 1) more than one aisle, 2) two or more rows of parking stalls, and 3) an area of 15,000 square feet or more shall provide and maintain in that area constructed after this chapter's effective date, canopy-type shade trees hardy to this region in tree islands totaling not less than three percent (3 %) of the surfaced parking area constructed after this chapter's effective date. The minimum size of each tree island shall be not less than 162 square feet. The zoning administrator or Plan Commission shall review a drawing of the perimeter or islands indicating the size, type and location of the islands, the plant materials, the protection afforded the plantings, including curbing, staking and mulching, and provisions for maintenance. Preserving existing trees is encouraged and shall be a factor in considering the proposal.

SECTION III: VALIDITY.

Should any section, clause or provision of the ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

SECTION IV: CONFLICTING PROVISIONS REPEALED.

All ordinances in conflict with any provisions of this ordinance are hereby repealed.

SECTION V: EFFECTIVE DATE.

This ordinance shall be in force from and after its introduction and publication as provided by statute.

SECTION VI: PART OF CODE:

This Ordinance becomes part of the City of Reedsburg Code, Chapter 690.

Dated this 25th day of November 2019.

David G. Estes, Mayor

Jacob Crosetto, Clerk/Treasurer

1st Reading at Council:	September 23, 2019
Public Hearing Noticed:	November 7, 2019 & November 14, 2019
2nd Reading at Council/Public Hearing:	November 25, 2019
Published, Enactment Date:	December 5, 2019

ORDINANCE NO. 1894-19

(Annexation- Parcel Numbers: 042-0753-00000 and 042-0758-00000)

Section 1: Recitals. This ordinance annexes land owned by the City of Reedsburg pursuant to Wis. Stat. sec. 66.0223. The law provides a streamlined procedure for the "Annexation of territory owned by a City or Village"; i.e. adoption of an annexation ordinance without petition and notice requirements. The annexation is not subject to review by the Department of Administration but the Department, and City Clerk, must receive copies of the annexation ordinance and plat. The area annexed is in the extraterritorial zoning area and shall continue to have the same zoning; i.e. A-Agriculture.

Section 2: Territory Annexed. In accordance with Wis. Stat. sec. 66.0223, the following territory owned by and lying contiguous to the City of Reedsburg, Wisconsin is annexed to the City of Reedsburg, Wisconsin.

Section 3: Map: See Exhibit A attached. Said parcel contains 20.16 acres (878,302 square feet more or less.)

Section 4: Population: Current population of the territory is 0.

Section 5: Effect of Annexation. From and after the date of this ordinance, the territory described in Section 2 shall be part of the City of Reedsburg for any and all purposes provided by law and all persons coming or residing within such territory shall be subject to all ordinances, rules and regulations governing the City of Reedsburg.

Section 6: Temporary Zoning Classification. The territory annexed to the City of Reedsburg by this ordinance is temporarily designated to be A-Agriculture for zoning purposes and subject to all provisions of the zoning ordinance of the City of Reedsburg relating to such district classification and to zoning in the city.

Section 7: Ward Designation. The annexed territory described in Section 2 of this ordinance is hereby made a part of City of Reedsburg Ward 14 Aldermanic District 2. The City of Reedsburg petitions the Sauk County Board of Supervisors to move the annexed territory from Supervisor District 4 to District 6.

Section 8: Validity. Should any section, clause or provision of the ordinance be declared by the courts to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 9: Conflicting Provisions Repealed. All ordinances in conflict with any provision of this Ordinance are hereby repealed.

Section 10: Effective Date. This Ordinance shall be in force from and after its introduction and publication as provided by statute.

Section 11: Part of Code. This ordinance becomes part of the zoning map of the City of Reedsburg.

Section 12: Filing. The City Clerk shall file seven (7) certified copies of the Ordinance with the Wisconsin Secretary of Administration together with seven (7) copies of the Plat showing the boundaries of the annexed territory.

Dated this 25th day of November.

CITY OF REEDSBURG

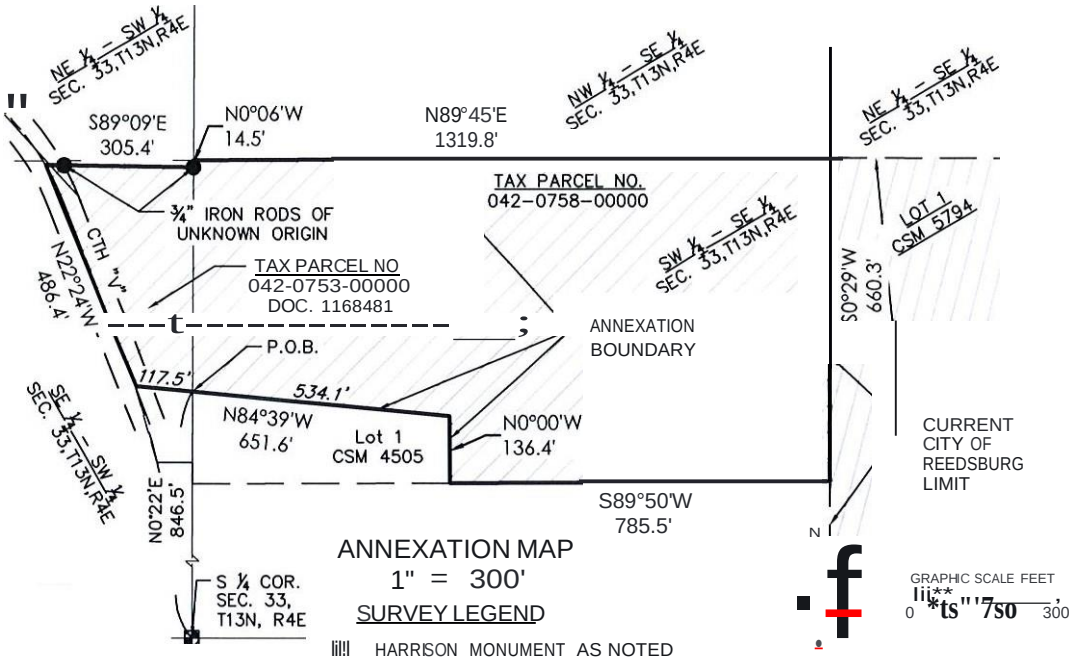
David G. Estes, Mayor

Jacob Crosetto, City Clerk/Treasurer

First Reading at Council:	October 28, 2019
Public Hearing Noticed:	November 7, 2019
Second Reading at Council/Public Hearing:	November 25, 2019
Published, Enactment Date:	December 5, 2019

ANNEXATION EXHIBIT

PART OF THE SE – SW & PART OF THE SW SE . SEC. 33, T13N, R4E, TOWN OF WINFIELD, SAUK COUNTY, WISCONSIN



ANNEXATION MAP
1" = 300'

SURVEY LEGEND

HARRISON MONUMENT AS NOTED

FOUND 3/4" III IRON ROO

LEGAL DESCRIPDON

Lands located in port of the Southwest Quarter of the Southeast Quarter ond port of thei Southeost Quarter of the Southwest Quarter, all in Section 33, Town 13 North, Ronge 4 East, Town of Winfield, Souk County, Wisconsin,!bound by the following described line:

Commencing ot the South Quarter Corner of Section 33, Township 13 North, Ronge 4 Eost;

Thence. NOD'22'E. along the west line of the Southwest Quarter of the Southeast Quarter 9f said Section 33, 646.5 feet. more or less, to the north line of Lot I of Souk County Certified Survey Mop No. 4505 ond the Point of Beginning of this descr ption;

Thence, N64'39'W, along the said north line of Lot I of Souk County Certified Survey Mop O. 45D5, 117.5 feet, more or less, to the centerline of Souk County Highway "v";

Thence, N22'24'W, abng the sold centerline of Souk County Highway "V", 486.4 feet, more or less. to its intersection with the north line of lands described in Souk County Register of Deeds Document No. 1166461;

Thence, S89'09'E, olong o line between two found .JM inch diometer iron rods of unknown origin ond its westerly extension being the north line of said lands described in Souk County Register of Deeds Document.No. 1168481, 305.4 feet more or less, to the northeast corner thereof and the west line of the Southwest Quarter of the Southeast Quarter of sodl Section 33, Town 13, North, Range 4 Eost;

Thence, N00'06'W, along the said west line of the Southwest Quarter of the Southeast Quarter of said Section 33, Town 13, North, Range 4 East, 14.5 feet, more or less to the northwest corner thereof;

Thence, N69'45'E, olong the north line of the sold Southwest Quarter of the Southeast Quarter of soid Section 33, Town 13, North, Range 4 East, 13196 feet, more *or* less, to the northeast corner thereof and the northwest corner of Lot 1 of Souk County Certified Survey Mop No. 5794;

Thence, S00°29'W, olong the east line of Southwest Quarter of the Southeast Quarter of sold Section 33, Town 13, North, Range 4 Eost and the west line of sold Lot 1 of Souk County Certified Survey Mop No. 5794, 660.3 feet, more or less, to the southeast corner of the north half of the Southwest Quarter of the Southeast Quarter of said Section 33, Township 13 North, Range 4 East;

Thence, S89'50'W, along the south line of sold north half of the Southwest Quarter of the Southeast Quarter of sold Section 33, Township 13 North, Ronge 4 Eost. 785.5 feet. more or less. to the southeast corner of sold Lot 1 of Souk County Certified Survey Mop 4505;

Thence, NOOOO'W, along the east line of said Lot 1 of Souk County Certified Survey Mop 4505, 136.4 feet. more or less, to the **northeost corner thereof;**

Thence, N64'39'W, along the north line of said Lot 1 of Souk County Certified Survey Mop 4505, 534.1 feet. more or less, returning to the Point of Beginning;

Annexation contains 20.16 Ac., (678,302 Sq. Ft.). more or less.

As Described in Souk County Register of Deeds Document No. 1168481

The North One-half of the Southwest Quarter of the Southeast Quarter (N 1/2 SW 1/4 SE 1/4) Section Thirty-three (33) Township Thirteen (13) North Range four (4) East; Also o parcel of land located in the Southeast Quarter of the Southwest Quarter (SE 1/4 SW 1/4), Section Thirty-three (33) Township Thirteen (13) North, Ronge four (4) East, bounded by the following described line: Commencing ot the South quarter corner of Section 33, T13N, R4E; thence North 656.74 feet along the North-South quarter line of said Section 33 to the Southwest corner of the North half of the Southwest Quarter of the Southeast Quarter (N 1/2 SW 1/4 SE 1/4) thence continuing North 44.00 feet along sold North-South quarter line of Section 33 to the Point Of Beginning of this description; thence continuing North 600.00 feet along said North-South quarter line of Section 33; thence West to a point in the centerline of CTH "v"; thence Southeasterly olong sold centerline of CTH "v" to o point which boors West, 52 feet, more or less, from the Point of Beginning;

thence East 52 feet, more or less, to the Point of Beginning; Town of Winfeld, Souk County, Wisconsin. EXCEPDNG THEREfROM Lot One (1) Certified Survey No. 4505 os recorded In the office of the Register of Deeds for Souk County, Wisconsin, in Volume 24 of Certified Surveys, Pogo 45D5.

22 Oct 2019 - 9:56a R:\Reedsburg, City of\190276 - Winfield Annexation\CADD\Annexation Description.dwg by: mlon

vierbicher planners | engineers | advisors Phone: 18001 261-3898	REVI I N	SCALE , - – 300 CHECEO adio DRAFTER	SHEET OF
	J S N - 190276	FILE 190276.dwg DATE 9/30/2019	

Exhibit

City of Reedsburg
134 South Locust Street, P.O. Box 490
Reedsburg, WI 53959
Ph. 608-524-6404 Fax. 608-524-8458
www.reedsburgwi.gov

STAFF REPORT AGENDA ITEM: _____

To: Common Council
By: Brian Duvalle, Planning/Building
Date of Meeting: November 25, 2019

Subject: Rezoning request from Government to R-3 Residential; ORD 1896-19 (2nd Reading)

BACKGROUND AND REQUEST
The South School property has an interested developer for multi-family housing of the former school building. Subsidized funding is required, and the application deadline is Dec 1. R-3 zoning is a requirement for that deadline.

APPLICANT: City of Reedsburg
LOCATION: 420 Plum St; parcel #1640
PROPOSED LAND USE CHANGE: Rezoning

FINANCIAL IMPACT
NA

STAFF RECOMMENDATION
Plan Commission recommends approval.

ACTION:
If the Mayor and City Council are ready, the following action may be made:

Motion to approve/deny – 1st Reading of Ordinance 1896-19 & set public hearing for 11/25/19.

Attachments: Ordinance 1896-19, map

Calendar of Actions:

1st Reading at Council:	October 28, 2019
Public Hearing Noticed:	November 7, 2019 & November 14, 2019
2nd Reading at Council/Public Hearing:	November 25, 2019
Published, Enactment Date:	December 5, 2019

ORDINANCE NO. 1896-19
(Zoning Change – 420 Plum St; Parcel #1640)

The City of Reedsburg, Sauk County, Wisconsin, does hereby ordain as follows:

SECTION 1: PURPOSE.

The purpose of this ordinance is to rezone the South School property to R-3 to allow for the possible development of multi-family housing.

SECTION II: PROVISION AMENDED.

The zoning map for the City of Reedsburg as set forth in the official map provided for in the Ordinances for the City of Reedsburg is hereby permanently amended so as to zone the territory listed below in the manner set forth below.

SECTION III: PROPERTY ZONING

Parcel #276-1640-00000 – 420 Plum St, Reedsburg, Wisconsin, is hereby zoned R-3 Residential

A property map may be obtained or accessed from the City Clerk at Reedsburg City Hall, 134 S. Locust St, Reedsburg, WI; (608) 524-6404; www.reedsburgwi.gov .

SECTION IV: VALIDITY.

Should any section, clause or provision of the ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

SECTION V: CONFLICTING PROVISIONS REPEALED.

All ordinances in conflict with any provisions of this ordinance are hereby repealed.

SECTION VI: EFFECTIVE DATE.

This ordinance shall be in force from and after its introduction and publication as provided by statute.

SECTION VII: PART OF CODE:

This Ordinance becomes part of the City of Reedsburg Code, Chapter 17.

Dated this 25th day of November 2019.

David G. Estes, Mayor

Jacob Crosetto, Clerk/Treasurer

1st Reading at Council:	October 28, 2019
Public Hearing Noticed:	November 7, 2019 & November 14, 2019
2nd Reading at Council/Public Hearing:	November 25, 2019
Published, Enactment Date:	December 5, 2019

City of Reedsburg GIS

DISCLAIMER: The City of Reedsburg does not guarantee the accuracy of the material contained here in and is not responsible for any misuse or misrepresentation of this information or its derivatives.

SCALE: 1" = 139 '

CITY OF REEDSBURG
134 S. Locust Street
PO Box 490
Reedsburg, WI 53959
608-524-6404

Print Date: 10/16/2019