IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

STEPHANIE HARPER,

Plaintiff,

v. CASE NO. 4:21cv85-RH-MJF

MARK GLASS, Commissioner
of the Florida Department of
Law Enforcement,

Defendant.

_________________________________/

ORDER ON THE MERITS

This case presents a challenge to the requirement for one category of Florida registered sex offenders—those not denominated sexual predators—to report travel to any single location for as little as three days in a calendar year. This order upholds the requirement to report the travel but strikes down the uselessly burdensome requirement for duplicative reports of travel to two different agencies, leaving in place only the requirement for a single report that, for in-state travel, need not be made in person.

I. Background

Like all states, Florida has a sex-offender registry. Florida Statutes § 943.0435 requires individuals to register based on offenses of conviction without

an individualized assessment of dangerousness. This approach has long been held constitutional. *See, e.g.*, *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 6–7 (2003) (rejecting a procedural-due-process challenge to placement of a sex offender on the registry without a hearing on dangerousness); *Smith v. Doe*, 538 U.S. 84 (2003) (holding Alaska's registry constitutional even as applied to offenses committed before the registry was created); *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005) (holding Florida's registry constitutional).

The plaintiff is required to register because she was convicted of having sex at age 25 with a 16-year-old boy. This was a crime because a 16-year-old is legally incapable of giving consent. *See* Fla. Stat. § 794.05(1). The plaintiff is now age 33, has completed her sentence, works full-time, and is the single mother of three children. She poses no significant risk of committing another sex offense.

The plaintiff filed this action against the Commissioner of the Florida Department of Law Enforcement—the official responsible for maintaining the registry. She asserts *ex post facto* and substantive-due-process claims under 42 U.S.C. § 1983. She denominates her claims as both facial and as applied, an apt description of the due-process claims, but the *ex post facto* claims are neither, instead turning on how the challenged provisions are "generally felt by those" who are subject to them. *McGuire v. Marshall*, 50 F.4th 986, 1004 (11th Cir. 2022).

As addressed in a prior order, ECF No. 82 at 1–4, the Commissioner is the proper defendant in an action of this kind. *See, e.g.*, *Doe ex rel. Doe # 6 v. Swearingen*, 51 F.4th 1295 (11th Cir. 2022); *McGroarty v. Swearingen*, 977 F.3d 1302 (11th Cir. 2020); *Delgado v. Swearingen*, 4:16-cv-501-RH (N.D. Fla. Sept. 21, 2018) (entering relief against the Commissioner, promptly resulting in full compliance by all affected state officials, confirming redressability of registry-related constitutional violations through an action against the Commissioner).

In her original complaint, the plaintiff asserted she is not dangerous and so should not be required to register at all. Alternatively, she challenged under federal and state law multiple aspects of the Florida registry regime. Parts of the federal claims were dismissed for failure to state a claim on which relief can be granted, and the state-law claims were dismissed based on the Eleventh Amendment. The plaintiff filed a first amended complaint, which was further narrowed on summary judgment, leaving at issue only the statute's travel-reporting requirements. Those requirements were made significantly more burdensome in 2018, after the plaintiff's conviction.

The travel-reporting claim has been tried to the court. This order sets out the court's findings of fact and conclusions of law on that claim. The plaintiff has preserved her objections to the prior rulings, which are not repeated here.

II. Nomenclature

For registry purposes, Florida divides sex offenders into two categories: first, sexual predators, governed by Florida Statutes § 775.21; and second, other sex offenders, governed by Florida Statutes § 943.0435. The plaintiff is not a sexual predator. This order addresses only the reporting requirements applicable to sex offenders who are not sexual predators. *See* Fla. Stat. § 943.0435(5). The order uses the terms "sex offender" and "registrant" to refer only to sex offenders who are not sexual predators.

Florida Statutes § 943.0435 requires registrants to report their travel not by saying they must report travel but by saying they must report any change of "permanent residence," "temporary residence," or "transient residence." *See id*. § 943.0435(4)(a) & (7). In § 943.0435(1)(f), the statute incorporates the definitions of these terms from the sexual-predator statute. "Permanent residence" is defined differently than one might expect: a "permanent residence" is a "place" where a registrant "abides, lodges, or resides for 3 or more consecutive days." Fla. Stat. § 775.21(2)(k). A three-night stay in a motel room, maybe over a long weekend, makes the motel room the registrant's "permanent residence," even if the registrant still has a home the registrant will return to after the long weekend. In that instance both the home and the motel room are permanent residences, apparently simultaneously.

A “temporary residence” is a “place,” other than a “permanent residence,” where the registrant “abides, lodges, or resides” for three or more days *in the aggregate* during any calendar year. *Id*. § 775.21(2)(n). Three one-night stays in the same motel room, or perhaps in the same motel, within the same calendar year, even months apart, make the motel room the registrant’s “temporary residence.”

A “transient residence” is a “county” where a person “lives, remains, or is located for a period of 3 or more days in the aggregate during a calendar year and which is not the person’s permanent or temporary address.” *Id.* § 775.21(2)(o). The term is apparently intended to apply to individuals who are homeless. Any attempt to parse the definition’s actual language might be futile: if a registrant goes shopping three times in a year at the same store in a neighboring county, is the neighboring county now the registrant’s “transient residence”? But the provision is not at issue here. *See* Pretrial Stipulation, ECF No.105 at 18 ¶ 5.

As a matter of standard usage, nobody would say traveling for a three-day weekend effects a change of “residence,” nor would anyone say staying at the same motel for one night three times in a year effects a change of “residence.” But a legislature can of course define terms as it wishes, and the Florida Legislature has chosen these definitions for these terms. This order uses these precise terms— "permanent,” “temporary,” or “transient” “residence”—as defined in the statute. The order uses “home” or “address” not as synonyms for the statutorily defined

term "permanent residence" but in their usual sense: a person's home or address is where the person lives. As used in this order, a change of address occurs when the person moves—not just when the person travels for three days.

III. Rational-Basis Scrutiny

The principal state interest supporting sex-offender registries is public safety through notice to individuals in the community. The theory is that individuals can take steps to protect themselves—or at least decide on their own whether to take steps to protect themselves—if they know that a registrant is living or staying nearby. A second interest is providing information to law enforcement that might assist in investigating a sex offense—information about where a registrant was living or just temporarily staying at the time of a new offense. A third interest, more attenuated, may be deterring registrants from committing new sex offenses—if the registry makes detection of a registrant's involvement in a new offense seem more likely, at least to the registrant, the registrant might be less likely to commit the offense, or so a state legislature could believe. The law is settled that the first of these three interests is a legitimate, nonpunitive, rational basis for a sex-offender registry, and this order assumes the second and third are as well. The plaintiff has not asserted the contrary.

The Commissioner asserts, in effect, that more information is always better. That is not so. The interests served by registries would be served better if

"noise"—information that does not serve the interests—could be eliminated. Noise might include, for example, information about sex offenders who pose no risk. And even for offenders who do pose a risk, noise might include useless information, including, for example, information reported only after-the-fact that a registrant stayed in the past at a motel to which the registrant will never return—information that the registrant probably would not have reported at all had the registrant committed a new sex offense while staying there.

Sorting useful information from noise is difficult and often not administratively feasible. Some registrants pose a substantial risk of committing a new sex offense, and one new sex offense, by any of the thousands of prior sex offenders, is one too many. Even well-trained mental-health professionals cannot reliably determine in all cases which sex offenders still pose a risk and which do not. Even well-trained law enforcement officers cannot be certain that a registrant's past, temporary stay at a given motel will not become relevant to a future investigation. And even well-trained criminal-justice professionals cannot be certain that a registrant's knowledge of the reporting requirement will not deter the registrant from committing a new sex offense, even if the registrant knows that failure to make a required after-the-fact report would probably go undetected.

A state legislature may choose where to draw the balance between comprehensive reporting and noise. As case after case recognizes, legislatures have

wide latitude in this field. A legislature may choose to require registration based on offenses of conviction without an individualized assessment of risk—an assessment that would be administratively costly and not wholly reliable, no matter how carefully performed. *See Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 6–7 (2003) (holding that a hearing on dangerousness is not required). A legislature may choose what kinds of information a registrant must provide and when and how the registrant must provide it.

Statutes imposing requirements of this kind are valid if supported by a rational basis, liberally construed in the state's favor. *See Doe v. Moore*, 410 F.3d 1337, 1345 (11th Cir. 2005). A plaintiff challenging such a requirement bears a "heavy burden." *McGuire v. Marshall*, 50 F.4th 986, 1005 (11th Cir. 2022). The plaintiff notes that no empirical evidence supports the effectiveness of registries at preventing sex offenses, but empirical evidence is not required. One new sex offense is one too many.

Even so, requirements that are both burdensome and plainly useless do not pass constitutional muster. This is so both when imposed after a registrant's offense of conviction—and so punitive in effect and thus prohibited by the *ex post facto* clause—and as a matter of substantive due process, even if imposed earlier. The Commissioner has not denied—to the contrary, has affirmatively asserted—

that the challenged provisions must survive rational-basis review. *See* Pretrial Stipulation, ECF No. 105 at 22 ¶ 3.

IV. Reporting Travel for Three Days or More

All states require a registrant to report the registrant's address. All states also require a registrant to report at least some additional locations where the registrant stays temporarily—locations to which a registrant travels away from home. A state may choose to require reporting of travel for as little as three days, *see McGuire*, 50 F.4th at 1020–21, and may require reporting of travel after the fact, *see Doe v. Moore*, 410 F.3d at 1348–49 (rejecting challenge to the Florida statute then in effect, Florida Statutes § 943.0435 (June 2005)).

The approaches to reporting travel vary. In Alabama, for example, a registrant must report *in advance* any travel out of the county of residence for three consecutive days or more. *See McGuire*, 50 F.4th at 998. The registrant must report the dates of travel, intended destination, and temporary-lodging information. *Id.* This way, individuals near where the registrant is staying can learn at the relevant time that the registrant is staying there. This serves the principal state interest in registries: allowing individuals to take steps to protect themselves—or at least to decide on their own whether to take steps to protect themselves.

Florida's approach is different and substantially less likely to serve this principal state interest. Florida requires reporting of in-state travel only after-the-

fact. *Compare* Fla. Stat. § 943.0435(4)(a) (requiring a registrant to report in-state travel "within 48 hours *after* any change in the offender's permanent, temporary, or transient residence") (emphasis added) *with id.* § 943.0435(7) (requiring a registrant who intends to establish a permanent, temporary, or transient residence *in another state* to report "within 48 hours *before* the date he or she intends to leave") (emphasis added). For both in-state and out-of-state travel, Florida ties the reporting requirement not to days away from home but to days away from home *in the same location*. A registrant who still has a home can travel for as long as the registrant wishes, without notifying anyone, so long as the registrant does not establish a new "permanent," "temporary," or "transient" "residence."

The ability to travel for longer than three days without reporting exists because permanent and temporary residence are defined as a "place" where a registrant abides, lodges, or resides for three or more days—either consecutively (for a permanent residence) or in the aggregate during a calendar year (for a temporary residence). One official has said "place" means, for example, a single motel room, so that if a registrant stays seven days in the same motel, but changes rooms every other night, the registrant has not stayed three days in the same "place" and thus need not report anything. *See* ECF No. 127 at 151–52. On another view, the whole motel is the "place," so that changing motels every other night would avoid any reporting requirement, but just changing rooms within the same

motel would not. Whichever view is taken, the Commissioner acknowledges that a registrant who still has a home need not report travel if the registrant does not stay in the same place for three consecutive days or for three days in the same calendar year. *See* Pretrial Stipulation, ECF No. 105 at 21 ¶ 25.

The record shows that registrants have avoided the reporting requirement in just this way—by changing motels, if not just rooms within a single motel. *See* ECF No. 126 at 54. One might well doubt that a reporting requirement so easily evaded could serve much purpose, but many Florida registrants dutifully report their travel. The requirement to do so survives rational-basis scrutiny.

Two circuit decisions support, though they do not mandate, this result.

First, in *Doe v. Moore*, the court rejected substantive-due-process, equal-protection, *ex post facto*, and right-to-travel challenges to the Florida travel-reporting requirement as then in effect. The requirement was for after-the-fact reporting, then as now. The requirement applied to travel to a single place for four or more consecutive or nonconsecutive days *in a month*. *See Doe v. Moore*, 410 F.3d at 1348 n.8. In 2006, the statute was amended to apply to five days *in a calendar year*, and in 2018—after the plaintiff's conviction—the statute was amended to the current three days in a calendar year. *See* Ch. 2006-235, § 1, Laws of Fla. (2006 amendment); Ch. 2018-105 § 1, Laws of Fla. (2018 amendment). The current three-days-in-a-year is substantially more burdensome than the four-days-

in-a-month at issue in *Doe v. Moore* and the five-days-in-a-year in effect at the time of the plaintiff's offense, but it is the same general approach. The difference is not enough to change the validity of the requirement to provide this information.

Second, in *McGuire*, the court rejected an *ex post facto* challenge to the Alabama requirement to report in advance travel out of the registrant's home county for three consecutive days or more. Alabama's interest was served better there than Florida's is here, both because the information was available to law enforcement and individuals in the relevant locations in advance and because the requirement could not be evaded by moving every other day. But again, the general approach—requiring at least some reporting of travel—was the same.

In sum, there is a rational basis for requiring registrants to report travel to a single place for as little as three days in a year. Reducing the period that triggers the reporting requirement increased the burden but still was not a substantive-due-process or *ex post facto* violation.

V. Duplicative Reporting

This is not, however, the end of the line. Under § 943.0435(4)(a), a registrant who moves from one place in Florida to another place in Florida—who has an in-state change of address—can make a single in-person report to the Florida Department of Highway Safety and Motor Vehicles ("DHSMV"). But for temporary travel within the state—any in-state change of "permanent residence"

that is not a change of address or any in-state change of "temporary residence"—§ 943.0435(4)(a) requires duplicative reporting to both DHSMV and a sheriff's office. This serves no state interest, imposes an unnecessary burden on registrants, and is so plainly useless that the responsible state officials no longer follow the statute as written. At least one other district court in this circuit has struck down a similarly burdensome and unnecessary duplicative travel-reporting requirement. *See McGuire v. Strange*, 83 F. Supp. 3d 1231, 1269 (M.D. Ala. 2015), *vacated on other grounds*, *McGuire v. Marshall*, 50 F.4th 986 (11th Cir. 2022).

Florida law requires drivers to update their licenses with any change of name or address within 30 days. *See* Fla. Stat. § 322.19(2). Same for holders of identification cards. *Id*. But it is especially important for a *registrant's* information to be current, so Florida law requires a registrant to update a license or identification card within *48 hours* after a change. Fla. Stat. § 943.0435(4)(a). The registrant must do this in person so that the accompanying photograph is current. All of this is unobjectionable.

The appropriate place to report a change of name or address is a DHSMV office. Understandably enough, this earned DHSMV a place in the sex-offender-registry statute. As the travel-reporting requirement evolved and expanded, though, the role of sheriffs increased, and the role of DHSMV receded. DHSMV updates names and addresses but does not track temporary travel—does not track changes

in what the sex-offender statute denominates a "temporary" or "transient" residence and denominates a "permanent" residence even when lasting as little as three days. Aside from a change of "residence" that is also a change of address—a change in where the person lives—DHSMV has no role. The Commissioner's own witnesses so testified. *See* ECF No. 126 at 276–77; ECF No. 127 at 101–02.

There is no reason for a registrant to report temporary travel to DHSMV, let alone to do so in person. There is no reason for a registrant to have to go to a DHSMV office, be turned away, and then provide the required information to the sheriff's office. But that is what the statute requires, at least on its face. The statute requires the registrant to "confirm" something that cannot be confirmed because it cannot happen. And the statute makes failing to do all this a felony. The statute says this:

> Each time a sexual offender's driver license or identification card is subject to renewal, and, without regard to the status of the offender's driver license or identification card, within 48 hours after any change in the offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process, the offender *shall report in person to a driver license office*, and is subject to the requirements specified in subsection (3) [providing that an offender must obtain a driver's license or identification card meeting sex-offender requirements unless the offender already has one]. The Department of Highway Safety and Motor Vehicles shall forward to the department all photographs and information provided by sexual offenders. Notwithstanding the restrictions set forth in s. 322.142 [limiting disclosure of driver's license information], the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the

> Department of Law Enforcement for purposes of public notification of sexual offenders as provided in this section and ss. 943.043 and 944.606. *A sexual offender who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in subsection (3) and this subsection shall also report any change in the sexual offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles*. The reporting requirements under this paragraph do not negate the requirement for a sexual offender to obtain a Florida driver license or an identification card as required in this section.

Fla. Stat. § 943.0435(4)(a) (emphasis added).

The Commissioner says a registrant who travels—who, for example, takes a three-day vacation, stays in a single place, and thus establishes a new "permanent residence"—need not go to a DHSMV office at all. But that is not what the statute says. The statute makes going to a DHSMV office in person mandatory: the registrant "shall report in person to a driver license office." The Commissioner says the statute makes going to the sheriff's office an alternative, but the statute says the registrant may "also" report to the sheriff's office, not that the registrant may report there instead. And to tie it down, the statute says that if the registrant reports to the sheriff's office, the registrant must "provide confirmation that he or she reported such information ['any change in the sexual offender's permanent, temporary, or transient residence or change in the offender's name'] to the

Department of Highway Safety and Motor Vehicles." The Commissioner has not explained how a registrant could "provide confirmation" that the registrant provided temporary-travel information to DHSMV if, as the Commissioner argues, the registrant was not required to report to DHSMV at all. Nor has the Commissioner suggested what confirmation could be provided if, as the evidence shows, DHSMV has no role in this and will not take the required information.

The Commissioner's willingness to give registrants a pass on the requirement for dual reporting—once to DHSMV, and then to the sheriff—is commendable. But the Commissioner's witnesses have testified inconsistently, hardly promoting confidence that the answer tomorrow will be the same as today. More importantly, violating the statute is a felony.

At least one registrant was arrested for failing to report out-of-state travel to both DHSMV and the county sheriff. *See* ECF No. 126 at 212–13; Pl.'s Ex. 1, ECF No. 104-1 at 6–7. The charge was dropped—the Commissioner says out-of-state travel is governed only by § 943.0435(7), not also by § 943.0435(4)(a)—but the episode makes clear that a registrant cannot safely ignore the statutory requirement for dual reporting of in-state travel. Moreover, the statute says an arrest alone, even without a conviction, makes a registrant ineligible for eventual termination of the requirement to register. *See* Fla. Stat. § 943.0435(11)(a)1. & 3. Perhaps

understandably, the plaintiff has forgone travel out of fear that she will miss some technical requirement, be arrested, jailed, and unable to raise her children.

With the stakes this high, it is not too much to suggest the state should repeal—not just ignore—requirements that serve no purpose and instead impose a substantial and unnecessary burden. This order holds unconstitutional the statutory requirement to report in person to DHSMV a change of permanent or temporary "residence," as defined in Florida Statutes § 775.21(2)(k) and (n), that is not a change of address of the kind that all holders of driver's licenses or identification cards must report.

This leaves in place the requirement to report the same information to a sheriff's office. The ruling will not adversely affect the state's interests in any way.

VI. In-Person Reporting

This leaves for consideration the issue of whether registrants must provide the required in-state travel information to the sheriff's office *in person*. In-person reporting, rather than online or other reporting, imposes a substantial burden on registrants. Registrants must report in person to the sheriff's office in their home county at least twice a year anyway, even if they travel not at all, so in-person reporting of travel provides little if any additional benefit to the state. *See* Fla. Stat. § 943.0435(14)(a). Indeed, the Florida Department of Law Enforcement has repeatedly asked the Florida Legislature to amend the statute to allow even change-

of-address information to be provided online. *See* Pl.'s Ex. 17, ECF No. 104-17 & Pl.'s Ex. 19, ECF No. 104-19.

The controlling consideration on this issue is that the governing statute simply does not require in-person reporting of in-state travel to the sheriff's office. The statute says "in person" when it means in person—and it does so time and again. The provision that requires reporting of in-state travel, § 943.0435(4)(a), explicitly requires a registrant to report "in person" to DHSMV—but that requirement is unconstitutional for temporary travel as set out in the prior section of this order. When § 943.0435(4)(a) says a registrant must "also" report the information at issue to the sheriff's office, the provision does not say the report must be made "in person."

In at least one instance, travel information has been provided online with the Commissioner's approval. When the plaintiff raised a concern that she would be unable, while the trial of this case was in progress, to get an appointment at DHSMV to report her travel to Tallahassee for the trial—a change of "permanent residence" for which the statute required this—the Commissioner's case agent assumed reporting to the sheriff's office would be sufficient and told her reporting in person was unnecessary. Instead, the case agent himself reported the information for the plaintiff electronically, using his cellular telephone.

Registrants themselves can and routinely do provide other required information—about internet identifiers, email addresses, telephone numbers, and employment—over the internet. *See* ECF No. 126 at 28–29. To do this they use a secure facility already in place. The only reason the facility is not available for reporting travel is that the Commissioner has not yet made it available for that purpose.

The Commissioner says he has taken this position out of concern that if the state allows reporting of this information other than in person, the state will lose funding under the federal Sex Offender Registration and Notification Act ("SORNA"). *See id.* at 263–64. But SORNA requires a registrant to provide information on travel only for seven days or more to a single location—referred to as temporary lodging—and does not require the information to be provided in person. *See* 28 C.F.R. § 72.6(c)(2) (requiring the provision of this information); U.S. Dep't of Just., *Sex Offender Registration and Notification Act Substantial Implementation Checklist* at 12, available at <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/Substantial_Implementation_Checklist_2020.pdf> (listing temporary lodging as information that must be updated immediately but for which "an in-person appearance is not required").

SORNA requires *in-person* reporting only for a change of "residence." *See* 34 U.S.C. § 20913(c); *see also* 28 C.F.R. § 727.7(c). And SORNA does not adopt Florida's peculiar definition of permanent, temporary, or transient "residence." Instead, SORNA uses "residence" without defining it, thus adopting the plain-language meaning of the term. Consistently with that plain-language meaning, SORNA says an individual "resides" at "the location of the individual's home or place where the individual habitually lives." *Id*. § 20911(13). In short, SORNA requires an in-person report when a registrant moves but not when a person only travels. The concern about federal funding, because plainly unfounded, is not a rational basis to require in-person reporting of travel information.

So the situation is this. The Florida registry statute does not require registrants to report in-state travel information—an in-state change in permanent or temporary residence, as those terms are defined for Florida registry purposes, other than a change of address—to a sheriff's office in person rather than online or in another acceptable way. The Florida Legislature has not endorsed any proffered rational basis for such an in-person reporting of this information.

Nor does the law of the circuit hold constitutional any requirement for in-person reporting in circumstances like these. Two cases reject constitutional challenges to statutory in-person reporting requirements, but neither is dispositive here.

First, in *McGuire v. Marshall*, 50 F.4th 986 (11th Cir. 2022), the court said Alabama required registrants "to report in person to law enforcement only once before a trip" and that this was not too great a burden. *McGuire*, 50 F.4th at 1021. The court identified as rational purposes of travel reporting encouraging "personal contact with law enforcement" and providing for "continuity of contact between jurisdictions." *Id*. Here, though, the Florida Legislature required personal contact only with DHSMV clerical staff—not law enforcement—and so did not embrace the "personal contact with law enforcement" rationale. And in-person reporting has nothing to do with, and Florida's system does not involve, "contact between jurisdictions." So that rationale, too, is missing.

There are also other substantial differences in the Alabama and Florida travel-reporting requirements. In Alabama, a registrant reports travel in person in advance but then is free to travel without further reporting. The system is workable. That is similar to Florida's treatment of out-of-state travel, which, under § 943.0435(7), must be reported to the sheriff's office in person in advance. This order similarly rejects the plaintiff's challenge to Florida's treatment of out-of-state travel. For in-state travel, in contrast, Florida requires a report "within 48 hours after" the change in permanent, temporary, or transient residence. The change in permanent or temporary residence occurs when the registrant has been in a "place" for three or more days.

The record shows that many sheriff's offices have limited days and time periods during which they accept in-person appointments for registry reporting. Obtaining an appointment within the statutory 48-hour window is often problematic, regardless of whether the registrant seeks to report where the registrant "resides or is located." Fla. Stat. § 943.0435(4)(a). Obtaining an appointment within the 48-hour window where the registrant resides would require cutting short any trip that would otherwise last more than five days. And reporting at the destination would, at best, require a substantial interruption of the registrant's intended activities, whether business or pleasure. Not every registrant would need an adjournment of a federal trial—as might have been required here—but registrants, like others, travel for a reason. Adding an in-person report to a sheriff's office would be a much greater burden than that held constitutionally permissible in *McGuire*.

To be sure, the Commissioner says the statute does not mean what it says. The Commissioner says a registrant can report a change in permanent, temporary, or transient residence *before*, not just "within 48 hours after," the change. Perhaps so. But if that is what the legislature intended, the legislature could easily have said so. Florida courts, as stridently as any courts anywhere, rely on a statute's plain language, without importing perceived legislative intent unmoored from statutory

language. *See, e.g.*, *Shim v. Buechel*, 339 So. 3d 315, 317 (Fla. 2022) (citing *State v. Peraza*, 259 So. 3d 728, 730 (Fla. 2018)).

In any event, allowing a registrant to report travel information online—while continuing to require semiannual in-person reports for all registrants and in-person reports for all changes of address—would fully serve the state's interests and reduce the substantial—indeed, because there is no regulatory benefit, punitive—burden on registrants.

The other Eleventh Circuit decision that rejects a constitutional challenge to a statute requiring in-person reporting of travel is *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005). The issue there was whether Florida could constitutionally require the reporting of temporary travel at all. The court said the answer was yes:

> The state has a strong interest in preventing future sexual offenses and alerting local law enforcement and citizens to the whereabouts of those that could reoffend. Without such a requirement, sex offenders could legally subvert the purpose of the statute by temporarily traveling to other jurisdictions for long periods of time and committing sex offenses without having to notify law enforcement. The state has drawn a line for temporary and permanent relocation, and we hold this requirement does not unreasonably burden the Appellants' right to travel.

Doe v. Moore, 410 F.3d at 1348–49. The statute required reporting in person, as accurately noted in the opinion, but the possibility of reporting online was not mentioned and apparently was not raised by the plaintiffs. At that time, now nearly 20 years ago, providing information online, while not unheard of, was not as

readily available and reliable as it is now. Moreover, the reporting requirement applied only to travel for four or more days in a month and thus was less burdensome than the new requirement to report travel for as little as three days in a calendar year. *Doe v. Moore* is not controlling on the question whether the Commissioner can properly require in-person reporting of travel under the statute as amended in 2018.

Bottom line: § 943.0435(4)(a) does not require *in-person* reporting of travel information to a sheriff's office. The requirement for a report is constitutional, but the report need not be made in person. This ruling does not affect out-of-state travel, except to the extent § 943.0435(4)(a) might be deemed—contrary to the Commissioner's position—to apply to out-of-state travel. Out-of-state travel is governed instead by Florida Statutes § 943.0435(7), which requires an in-person report of out-of-state travel in advance, not within "48 hours after," and is constitutional.

VII. Conclusion

Florida's requirement for registrants to report travel for as little as three days is constitutional. But the statutory requirement for duplicative reporting of in-state travel—once to DHSMV in person, and "also" to a sheriff's office—is not. This order redresses the constitutional violation by striking down the useless

requirement to report temporary travel to DHSMV, leaving in place the requirement to report to a sheriff's office.

The statute does not require the report to the sheriff's office for in-state travel to be made in person. Absent a legislative endorsement of any reason for an in-person report, the substantial burden of reporting in that manner does not survive rational-basis scrutiny. This order affords the Commissioner 60 days to effect the necessary change. The Commissioner should act sooner, if feasible, and may seek an extension, if necessary.

IT IS ORDERED:

1. It is declared that Florida Statutes § 943.0435(4)(a) is unconstitutional to the extent it (a) requires a sex-offender registrant to report in person to the Florida Department of Highway Safety and Motor Vehicles ("DHSMV") a change of "permanent" or "temporary" "residence," as defined in Florida Statutes § 775.21(2)(k) and (n), that is not either a change of address of the kind that all holders of driver's licenses or identification cards must report or a change of the registrant's home or a change of the place where the registrant habitually lives, and (b) requires a sex-offender registrant to "provide confirmation" that the registrant has reported such information to DHSMV. Florida Statutes § 943.0435(4)(a), in all other respects, and § 943.0435(7) are constitutional on their face and as applied to the plaintiff and do not violate the *ex post facto* clause.

2. Within 60 days after entry of this order, the defendant Commissioner of the Florida Department of Law Enforcement must make available a method by which registrants may report online or through similarly accessible means any change of "permanent" or "temporary" "residence," as defined in Florida Statutes § 775.21(2)(k) and (n), as required by Florida Statutes § 943.0435(4)(a), that is not a change of address, change of the registrant's home, or change of the place where the registrant habitually lives.

3. The injunction in paragraph 2 binds the Commissioner and his officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

4. The clerk must enter judgment conforming to this order and the prior orders addressing the plaintiff's other claims.

5. The clerk must close the file.

SO ORDERED on March 25, 2024.

s/Robert L. Hinkle
United States District Judge