

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

John Doe
Petitioner

v.

State of New Hampshire
Defendant

Civ. No.: _____

PETITION FOR DECLARATORY RELIEF

NOW COMES John Doe, Petitioner in this action, and petitions the Court pursuant to RSA 491:7 and RSA 491:22 to declare the Registration of Criminal Offenders Act (the “Act”), RSA Ch. 651-B, is unconstitutional because it violates the prohibition against retrospective laws and due process. In support of the relief requested herein, Petitioner represents:

Introduction

Petitioner seeks declaratory relief from the State’s unconstitutional enforcement of the Act, the original version of which was passed almost six years after Petitioner’s conviction of two sexual offenses. As since amended, the Act imposes significant, unwarranted and *lifetime* restraints on Petitioner’s freedom of movement through ongoing *in person* reporting requirements, while also requiring him to be registered *for life* as a “sexual offender” on the Department of Safety’s public Internet web site *irrespective of whether Petitioner poses any danger to the public*.

In 1987, Petitioner pled guilty to two counts of aggravated felonious sexual assault. He served his sentence and successfully completed rehabilitative counseling. In 1990, the sentencing court ruled that Petitioner had been rehabilitated and terminated his sentence and probation.

Two years later, in 1992, the legislature enacted a sexual offender reporting and registration law and, in 1993, made it retroactive such that it included Petitioner. Since then, the legislature substantially expanded the Act's requirements such that they now (i) have a significant punitive impact on Petitioner in violation of the prohibition in Part I, Article 23 of the New Hampshire Constitution against *retrospective laws*, and (ii) violate his *liberty* and *privacy* interests by subjecting him to public humiliation, condemnation and stigma in violation of the guarantee in Part I, Article 15 of *due process of law*.

The Parties

(1) Petitioner, John Doe, is an individual who resides in Hillsborough County, New Hampshire, and uses the "John Doe" pseudonym to minimize, in challenging the Act, any *further* public humiliation, condemnation and stigma to which he has been subjected. Simultaneously with the filing of this petition, Petitioner is filing a sealed motion for leave to use the "John Doe" pseudonym which sets forth his name and mailing address.

(2) Respondent, State of New Hampshire, will be represented by the Attorney General, Michael A. Delaney, Esq., with a mailing address of the New Hampshire Attorney General's Office, 33 Capitol Street, Concord, NH 03301-6397.

Jurisdiction and Venue

(3) The Court has jurisdiction over the subject matter of this action pursuant to RSA 491:7 and RSA 491:22.

(4) Venue is proper under RSA 507:9 because Respondent resides in Merrimack County.

Undisputed Facts

(5) The allegations of paragraph (1) through (4) of the Petition are hereby realleged and incorporated herein by reference.

(6) In 1975, the legislature first defined aggravated felonious sexual assault under RSA 632-A:2 to mean sexual penetration “when the victim is thirteen years of age or older and under sixteen years of age and the actor is a member of the same household as the victim...”

(7) In November 1987, Petitioner, who was of majority, pled guilty to two counts of violating RSA 632-A:2 for having sexual relations with his step-daughter, who was a minor at the time of the offenses. The court sentenced Petitioner to two and one-half to five years in prison, deferred for two years, and placed him on probation for four years. Petitioner was required to complete, and did complete, two years of sex offender counseling as a condition of his probation.

(8) The sentencing court in 1990 suspended Petitioner’s deferred sentence and, prior to Petitioner having completed four years of probation, ruled he had been successfully rehabilitated and terminated his probation.

(9) The legislature first enacted a law requiring the registration of sexual offenders in 1992. *Laws 1992, ch. 213* (codified as RSA 632 A:11-19), attached as Exhibit 1. Every sexual offender was required to register for life, and to report annually to law enforcement his mailing address and place of residence, giving notice of any change in address within 10 days. The information provided by sexual offenders was *confidential* and restricted to law enforcement personnel. The Act was not retroactive and applied only to sexual offenders convicted on or after January 1, 1993.

(10) In 1993, the legislature made the Act retroactive by applying it to “any sexual offender, irrespective of the date of conviction of the offense, who...has completed his sentence not more than 6 years before the effective date of this act,” January 1, 1994. *Laws 1993, ch. 135*, attached as Exhibit 2. Every sexual offender who had completed his sentence on or after January 1, 1988, which included Petitioner, became subject to the retroactive application of the Act.

(11) In *State v. Costello*, 138 N.H. 587 (1994), the court held that the retroactive application of RSA 632-A:11-19 did not violate the prohibition against *retrospective* laws guaranteed by Part I, Article 23. The court ruled that the law was not “punitive but merely regulatory, providing a means for law enforcement to share information regarding the whereabouts of convicted sexual offenders,” noting that such information “is held confidentially within the law enforcement community.” *Id.* at 590.

(12) The legislature repealed RSA 632-A:11-19 in 1996 and replaced it with RSA Ch. 651-B. *Laws 1996, ch. 293*, attached as Exhibit 3. In doing so, the legislature continued the Act’s retroactive application to all sexual offenders who had completed their sentences on or after January 1, 1988. But it departed from the prior law by removing the *confidential* classification of the information provided by sexual offenders and authorizing law enforcement to provide organizations such as “schools, youth groups, day care centers, [and] libraries” with a sexual offender’s (i) name, address and photograph, (ii) the offense for which the offender was convicted, (iii) the method of approach used by the offender, and (iv) profiles of previous victims. See Exhibit 3, RSA 651-B:7,II. Unlike the current version of the Act, the legislature provided sexual offenders with the opportunity to prohibit law enforcement from providing such information to community organizations by demonstrating that “the risk of reoffending is low.” Id., RSA 651-B:7,III(c).

(13) In 1998, the legislature repealed section 7 of the Act, entitled “Confidentiality,” and replaced it with a new section 7, entitled “Availability of Information to the Public.” *Laws 1998, ch. 239:2*, attached as Exhibit 4. Among other changes, new section 7 required the Department of Safety (the “Department”) to maintain a list of all individuals subject to the Act’s registration requirement, which list “shall include:” (i) the individual’s name and address, (ii) the offense for which the individual was convicted, (iii) the date of the conviction and court, including any other convictions, (iv) the individual’s photograph or physical description, (v) information on the profile of the victim or victims and (vi) the individual’s method of approach. Upon request, the local law enforcement agency was authorized to make the list available to “interested members of the public,” a term the legislature did not define.

But of particular consequence and harm to Petitioner, the legislature repealed and did not replace the 1996 provisions of section 7 that permitted offenders to prohibit public disclosure of information they had provided to law enforcement by showing they were at low risk to reoffend.

(14) The legislature significantly transformed the impact of the Act in 2002 by giving the public access to the Department’s “official public internet access site,” which contained the list and detailed information about criminal offenders which the Department was required to maintain. *Laws 2002, ch. 241*.

(15) In 2006, the legislature expanded the Act’s reporting requirements, *Laws 2006, ch. 327*, and again did so in 2008. *Laws 2008, ch. 334*. Petitioner now must submit to law enforcement, *inter alia*: (i) his social security number, (ii) telephone numbers for fixed locations and cell phones, (iii) passport, travel and immigration documents, (iv) name, phone number and address of landlord, (v) photocopy of driver’s license, (vi) “regular routes of travel” if not

employed, and (vii) volunteer work, RSA 651-B:4,III, and, upon request, a DNA sample and major case prints. RSA 651-B:4,IV.

(16) In 2008, the legislature also established a three-tier structure of offenders. Tier III, the most serious, includes Petitioner and mandates that he report in person to local law enforcement every three months after establishing a residence. RSA 651-B:4,I(a). Law enforcement has the discretion to notify the superintendent and principal of any school within its jurisdiction of Petitioner's residence. RSA 651-B:5,III. The Department, in addition and twice each year, is required to verify the address at which the offender resides, either in person or by certified mail. RSA 651-B:3,III. The legislature also requires individuals subject to the Act's registration requirement to "report any online identifier such person uses or intends to use."

(17) Petitioner was first notified of the Act's registration requirement in 2004. Since then he has been compliant with the Act's numerous and burdensome registration and reporting requirements, and he is listed on the Department's official public internet access site.

(18) In 2006, Petitioner suffered a life-threatening ruptured abdominal aortic aneurysm which required emergency surgery, and with several additional surgical procedures has left him 100% disabled.

(19) Today, Petitioner lives in a single room in a boarding house, with shared bath and eating facilities. He applied for section 8 subsidized housing, a program established by Congress to aid "low-income families in obtaining a decent place to live." Housing and Development Act of 1974 (codified as amended at 42 U.S.C. §1437f). However, Petitioner was rejected because of the Act's *lifetime* registration requirement. Any person who is subject to lifetime registration under a state sexual registration program is ineligible to live in subsidized housing units. *See* 42 U.S.C. §13663(a) and 24 C.F.R. §982.553.

**Count I – Violation of Part I, Article 23 of
The New Hampshire Constitution
(Retrospective Laws)**

(20) The allegations of paragraphs (1) through (19) of the Petition are hereby realleged and incorporated herein by reference.

(21) Under Part I, Article 23 of the New Hampshire Constitution “retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.”

(22) As set forth in paragraphs (12) through (16) hereof, the legislature has made numerous, significant and increasingly burdensome amendments to the Act since *State v. Costello* was decided in 1994. The Act now “inflicts greater punishment” than at the time Petitioner committed the two offenses to which he pled guilty in 1987. *State v. Costello*, 138 N.H. at 589.

(23) At the time of *Costello*, the Act required sexual offenders (i) to register for life, (ii) to annually provide law enforcement a mailing address and residence, and (iii) to give notice of any change of address within 10 days. The limited information provided was confidential and restricted to law enforcement. See paragraph (9) hereof. Given those limited requirements, the *Costello* court held that the Act did no more than provide law enforcement with information on “the whereabouts of convicted sexual offenders” and was not “punitive but merely regulatory.” 138 N.H. at 590.

(24) In marked contrast, the Act today goes well beyond informing law enforcement of the whereabouts of convicted sexual offenders. It now requires Tier III sexual offenders like Petitioner “to report in person quarterly, within 5 business days after each anniversary of the

offender's date of birth and every 3 months thereafter.” RSA 651-B:4,I(a). Each time Petitioner reports in person he must provide the following information:

- (a) Name and any aliases.
- (b) Address of any permanent residence and address of any current temporary residence, within the state or out-of-state, and mailing address. A post office box shall not be provided in lieu of a physical residential address. If the offender cannot provide a definite address, he or she shall provide information about all places where he or she habitually lives.
- (c) Name, address, and date of any employment or schooling. For purposes of this section, the term "employment" includes volunteer work or work without remuneration. If the offender does not have a fixed place of work, he or she shall provide information about all places he or she generally works, and any regular routes of travel.
- (d) Any professional licenses or certifications that authorize the offender to ~~engage in an occupation or carry out a trade or business.~~
- (e) Make, model, color, and license plate or registration number and state of registration of any vehicle, watercraft, or aircraft owned or regularly operated by the offender, and the place or places where such vehicles, watercraft, or aircraft are regularly kept.
- (f) Date of birth, including any alias date of birth used by the offender.
- (g) Social security number.
- (h) Physical description to include identifying marks such as scars and tattoos.
- (i) Telephone numbers for both fixed location and cell phones.
- (j) Passport, travel, and immigration documents.
- (k) The name, address, and phone number of any landlord, if the offender resides in rental property.

RSA 651-B:4,III.

In addition to the foregoing, RSA 651-B:4-a requires offenders to “report any online identifier such person uses or intends to use.” An online identifier “includes all of the following: electronic mail address, instant message screen name, user identification, user profile information, and chat or other Internet communication name or identity information.” Section 4-a requires offenders who change or create a new online identifier to report the new online identifier to law enforcement before using it.

(25) The Act today authorizes the Department to require each sexual offender at the time of semi-annual registration to submit:

- (a) A photograph taken by the law enforcement agency each time the person is required to report to the law enforcement agency under this section.
- (b) A DNA sample, if such sample has not already been provided.
- (c) A set of major case prints, including fingerprints and palm prints of the offender.
- (d) A photocopy of a valid driver's license or identification card issued to the offender. The consent of the registrant shall not be necessary to obtain this information. Such information may be used in the performance of any valid law enforcement function.”

RSA 651-B:3,III and RSA 651-B:4,IV.

(26) The Act today no longer classifies and treats information provided by sexual offenders as confidential. In fact, Petitioner is obligated to report the following information to the Department, which posts such information on its public internet web site:

- (1) Offender's name, alias, age, race, sex, date of birth, height, weight, hair and eye color, and any other relevant physical description.
- (2) Address of any permanent residence and address of any temporary residence, within the state or out-of-state.
- (3) The offense for which the individual is required to register and the text of the provision of law defining the offense, and any other sex offense for which the individual has been convicted.
- (4) The date and court of the adjudication on the offense for which the individual is registered.
- (5) Outstanding arrest warrants, and the information listed in subparagraphs (a)(1)-(3), for any sexual offender or offender against children who has not complied with the obligation to register under this chapter.
- (6) Criminal history of the offender, including the date of all convictions and the status of parole, probation, or supervised release, and registration status.
- (7) A photograph of the individual.
- (8) The address of any place where the individual is or will be a student.

RSA 651-B:7,III. In addition, if the information is available, the Department's web site posting may include:

- (1) Information on the profile of the victim of the individual's offense.
- (2) The method of approach utilized by the individual.

Id.

As required by RSA 651-B:7,IV(a), the Department is to make the public web site list “available to the public in a manner that will permit the public to obtain relevant information for

each sex offender by a single query for any given zip code or geographic radius set by the user. The website may include additional search parameters as determined by the department.”

(27) Beyond the Act’s requirements set forth in paragraphs (24) –(26) hereof, the Department shall verify

... in person, the address at which the offender resides or by sending a letter by certified non-forwarding mail to the offender. The address verification shall occur prior to the offender's birthday and again prior to the offender's *6-month semi-annual registration*. The address verification shall remind the offender of the obligation to register in person. The offender shall sign the address verification and return it to the officer, if the address verification was made in person, or to the department within 10 business days of receipt (emphasis added).

RSA 651-B:3,III.

(28) If the purpose of the Act were to ensure that law enforcement would know Petitioner’s whereabouts, there would be no need for him to report every 3 months given the requirement that he notify law enforcement of a change of residence within 5 days. RSA 651-B:5,I. Nor would there be any need for Petitioner, each time he reports, to provide such information as his place of employment, professional licenses or certifications, telephone numbers, passport or travel documents, or name of landlord. In addition, no regulatory purpose whatsoever is served by all the information about Petitioner that the Department is required to post on its public web site, as set forth in paragraph (26) hereof. The cumulative impact of the Act’s requirements is to punish, humiliate, shame and subject Petitioner to public condemnation for two offenses he pled guilty to almost 25 years ago, and for which he then successfully completed two years of sexual offender counseling.

(29) The Act’s numerous and burdensome requirements are similar to sex offender registration laws in other jurisdictions that courts have held violate the prohibition against retrospective laws. In *Wallace v Indiana*, 905 N.E.2d 371 (Ind. 2009), the court held that the

state's sex offender registration law violated the prohibition against *ex post facto* laws under the state's constitution. Addressing reporting and internet posting requirements similar to the Act, the court stated:

It appears to us that through aggressive notification of their crimes, the Act exposes registrants to profound humiliation and community-wide ostracism. Further the practical effect of this dissemination is that it often subjects offenders to "vigilante justice" which may include lost employment opportunities, housing discrimination, threats, and violence.

Id. at 380. Continuing, the court ruled that the law had a "deterrent effect" and "promote[d] 'community condemnation of the offender' ... traditional aims of punishment." *Id.* at 382.

Finally, the court found that the punitive nature of the law resulted from the fact that it:

... makes information on all sex offenders available to the general public without restriction and *without regard to whether the individual poses any particular future risk*. Indeed we think it significant for this excessiveness inquiry that the Act provides *no mechanism by which a registered sex offender can petition the court for relief* from the obligation of continued registration and disclosure. Offenders cannot shorten their registration or notification period, even on the clearest proof of rehabilitation (emphasis added).

Id. at 384. So, too, the Act. Like the Indiana law, it fails to provide Petitioner with any opportunity to show he has been rehabilitated. Other courts have also struck down sex offender registration laws on *ex post facto* grounds. See *State v. Simnick*, 779 N.W.2d 335 (Neb. 2010) (amended statute authorized lifetime registration requirement); *State v. Letalien*, 985 A.2d 4 (Me. 2009) (registration of certain offenders increased from 15 years to lifetime with no opportunity for relief); *Doe v. State*, 189 P.3d 999, 1012 (Alaska 2008) (noting "the dissemination provision at least resembles the punishment of shaming").

(30) The Maine Supreme Court's decision in *State v. Letalien* is particularly instructive on the punitive impact of the Act. The sexual registration law in Maine, the Sexual Offender Registration and Notification Act of 1999 (referred to a "SORNA of 1999"), like the Act,

requires in person reporting to law enforcement every 3 months. Addressing that requirement, the court stated:

These provisions, which require lifetime registrants, under threat of prosecution, to physically appear at their local law enforcement agencies within five days of receiving a notice by mail, place substantial restrictions on the movements of lifetime registrants and may work an “impractical impediment that amounts to an affirmative disability” ... [Q]uarterly, in-person verification of identity and location of home, school, and employment at a local police station, including fingerprinting and the submission of a photograph, for the remainder of one's life, is undoubtedly a form of significant supervision by the state. In this respect, SORNA of 1999 imposes a disability or restraint that is neither minor nor indirect.

985 A2d. at 18. In holding that the law, *on its face*, violated the Maine Constitution's prohibition against ex post facto laws, the court concluded:

The retroactive application of the lifetime registration requirement and quarterly in-person verification procedures of SORNA of 1999 to offenders originally sentenced subject to SORA of 1991 and SORNA of 1995, without, at a minimum, affording those offenders any opportunity to ever be relieved of the duty as was permitted under those laws, is, by the clearest proof, punitive, and violates the Maine and United States Constitutions' prohibitions against ex post facto laws.

Id. at 26. So too, the punitive nature of the Act.

(31) Petitioner stands in the same shoes as the defendants in the Indiana, Nebraska and Maine cases. The State has made no assessment whether he poses any risk to society, nor has it afforded Petitioner with any opportunity to show he does not. Instead, by imposing a *lifetime* burdensome restraint on Petitioner's freedom of movement and making him a *lifetime* registrant on the Department's public internet web site, the State has sentenced him to a *lifetime* of shame, humiliation, discrimination and, possibly, “vigilante justice.” By so doing the State “inflicts greater punishment” on him in violation of Part I, Article 23.

**Count II – Violation of Part I, Article 15 of
The New Hampshire Constitution
(Due Process)**

(32) The allegations of paragraphs (1) through (31) of the Petition are hereby realleged and incorporated herein by reference.

(33) Part I, Article 15 of the New Hampshire State Constitution reads, in relevant part: “No subject shall be . . . deprived of his . . . liberty . . . but by the . . . law of the land.” The Supreme Court has interpreted “law of the land” to mean “due process of law.” *Petition of Harvey*, 108 N.H. 196, 198 (1967).

(34) Under Article 15, an individual is entitled to due process protections where a protected liberty interest is at stake. *Riblet Tramway Co., Inc. v. Stickney*, 129 N.H. 140 (1987). An individual has a liberty interest in his reputation. In *State v. Veale*, 158 N.H. 632, 639 (2009), our court found “ample support in our jurisprudence for the proposition that reputational stigma can, by itself, constitute a deprivation of liberty deserving due process.” Further, the court stated in *Petition of Bagley*, 128 N.H. 275, 284 (1986) that “[t]he general rule is that a person’s liberty may be impaired when governmental action seriously damages his standing and associations in the community.” There, the court held that a “founded” report of child neglect entered in the Division of Children and Youth Service’s [confidential] central registry was “an official adjudication of status of potentially injurious consequences and thus deprived the Bagleys of their ‘liberty’ within the meaning of part I, article 15.” *Id.* at 285; see *In Re Shelby R.*, 148 N.H. 237, 240 (2002).

And although the question has not been addressed in a precedential ruling, our court has cited *United States v. Laub*, 385 U.S. 475 (1967) for the proposition that “the

constitutional right to travel ... may not be denied without due process.” *State v. Mitchell*, 115 N.H. 120, 121 (1975) *See Kent v. Dulles*, 357 U.S. 116, 125 (1958) (recognizing the right to travel is a protected liberty interest and noting “freedom of movement” is “deeply engrained in our history”).

(35) Placing Petitioner’s name, for the rest of his life, on the Department’s official publicly accessible web site that lists sexual offenders, as mandated by the Act, “can potentially damage [Petitioner’s] protected interest in reputation.” *State v. Veale*, 158 N.H. at 639. It stigmatizes him for life as a sexual offender likely to reoffend. *Cf. New Hampshire Civil Liberties Union v. City of Manchester*, 149 N.H. 437, 441 (2003) (“... individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity”). For this reason, the Court must “consider what process is required to protect that interest.” *State v. Veale*, 158 N.H. at 639.

(36) The United States Constitution and Part I, Article 19 of the New Hampshire Constitution protect a citizen’s right to privacy from government intrusion. *Griswold v. Connecticut*, 381 U.S. 479 (1965)(recognizing the constitutional right to privacy); *State v. Canelo*, 139 N.H. 376, 387 (1995)(recognizing a citizen’s “strong right of privacy inherent in part I, article 19”). New Hampshire recognizes that public disclosure of private facts is an invasion of a person’s right to privacy. *See Karch v. Baybank FSB*, 147 N.H. 525, 535 (2002); *Fischer v. Hooper*, 143 N.H. 585, 594 (1999)(recognizing plaintiff can recover for mental suffering in a case of a willful invasion of the right to privacy); *See also* RSA Ch. 359-C (2010) (Right to Privacy Act).

(37) RSA 651-B:7, III, requires Petitioner, as a Tier III offender, to provide information to the Department that is posted to its official public internet web site, including his address,

physical characteristics, criminal history and online identifiers. Although Petitioner's address and physical characteristics may have been part of the record at the time of his 1987 conviction, any changes to his address and physical characteristics – e.g., “height, weight, hair and eye color” – date of birth, and photograph, would not be public but for the registration and reporting requirement imposed by the Act. The public disclosure of such information plainly implicates Petitioner's privacy interests. *Karch v. Baybank FSB*, 147 N.H. at 535; *Sawyer v. Boufford*, 113 N.H. 627 (1973) (ruling that the benefit received by compelling disclosure of private information was considerably outweighed by the “invasion of the defendant's right of privacy”).

(38) To determine the process due Petitioner to protect his liberty and privacy interests, the Court is required to balance three factors: “first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of the interest through the procedures used, and the probable value if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *State v. Lavoie*, 155 N.H. 477, 482 (2007); *accord, State v. Veale*, 158 N.H. at 639.

(39) As to the first factor, Petitioner's privacy interests – specifically his interest in not being compelled to publicly disclose private facts about himself – have been infringed by the Act's registration and reporting requirements. Additionally, his liberty interests – specifically his reputational interest, his interest in not being stigmatized as a sexual offender likely to re-offend, and his interest in “freedom of movement” – have been infringed by the Act.

As to the second factor, the Act once did, but now fails to provide any process or safeguard to protect Petitioner's liberty and privacy interests. There would be significant value

in affording Petitioner a hearing to determine whether he is likely to re-offend because it would minimize, if not eliminate, the risk of an erroneous deprivation of Petitioner's liberty interests.

Finally, as to the third factor, assuming the original purpose of the Act was to inform law enforcement of the whereabouts of sexual offenders, as the *Costello* court held, which the legislature has now been extended to include the public, that presumptive public interest would in no way be disserved by affording Petitioner a hearing. In fact, the converse is true. A hearing would minimize the risk of unduly alarming the public by including on the Department's public internet web site individuals, like Petitioner, who are at no or low risk to re-offend.

(40) Although our court has recognized that the "requirements of due process are flexible and call for such procedural protections as the particular situation demands," *State v. Veale*, 158 N.H. at 642 (citation omitted), the Act contains no protections whatsoever. Since the sentencing court determined he had been successfully rehabilitated in August 1990, Petitioner has had no opportunity to show he is not likely to re-offend. This deprivation of due process is highlighted all the more by the fact that following a ruptured aortic aneurysm in 2006, Petitioner has been 100% disabled.

(41) "The ultimate standard for judging a due process claim is the notion of fundamental fairness." *State v. Veale*, 158 N.H. at 637 (citation omitted). Here, the State, by denying Petitioner a hearing, has failed to meet that standard and, thereby, has violated Part I, Article 15.

Request for Relief

WHEREFORE, Petitioner respectfully requests the Court to grant the following relief:

A. Provide for prompt adjudication of the petition;

- B. Declare that RSA Ch. 651-B violates the prohibition against retrospective laws guaranteed by Part I, Article 23 of the New Hampshire Constitution;
- C. Declare that RSA Ch. 651-B violates due process guaranteed by Part I, Article 15 of the New Hampshire Constitution; and
- D. Grant such other and further relief as may be just and necessary.

JOHN DOE
By his Attorneys,

NEW HAMPSHIRE CIVIL LIBERTIES UNION

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CERTIFICATE OF SERVICE

I, William L. Chapman, Esq., hereby certify on this 4th day of October, I caused a copy of the foregoing Petition for Declaratory Relief to be served on Michael A. Delaney, Esq., Attorney General.

William L. Chapman
William L. Chapman, Esq.

EXHIBIT 1

[1992 – 213:1] [effective date January 1, 1993]

CHAPTER 632-A
Sexual Assault and Related Offenses

632-A:1 Definitions. In this chapter:

- I. “Actor” means a person accused of a crime of sexual assault.
- I-a. “Affinity” means a relation which one spouses because of marriage has to blood relatives of the other spouse.
- II. “Retaliation” means threats of future physical or mental punishment, kidnapping, false imprisonment, extortion or public humiliation or disgrace.
- III. “Serious personal injury” means extensive bodily injury or disfigurement, extreme mental anguish or trauma, disease or loss of impairment of a sexual or reproductive organ.
- IV. “Sexual contact” means the intentional touching of the victim’s or actor’s sexual or intimate parts, including breasts and buttocks, and the intentional touching of the victim’s or actor’s clothing covering the immediate area of the victim’s or actor’s sexual or intimate parts. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.
- V. “Sexual penetration” means:
 - (a) Sexual intercourse; or
 - (b) Cunnilingus; or
 - (c) Fellatio; or
 - (d) Anal intercourse; or
 - (e) Any intrusion, however slight, of any part of the actor’s body or any object manipulated by the actor into genital or anal openings of the victim’s body; or
 - (f) Any intrusion, however slight, of any part of the victim’s body into genital or anal openings of the actor’s body.
 - (g) Emission is not required as an element of any form of sexual penetration.

632-A:2 Aggravated Felonious Sexual Assault. A person is guilty of a class A felony if he engages in sexual penetration with another person under any of the following circumstances:

- I. When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.
- II. When the victim is physically helpless to resist.
- III. When the actor coerces the victim to submit by threatening to use physical force, physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.
- IV. When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.
- V. When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.

- VI. When the actor, without the prior knowledge or consent of the victim administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.
- VII. When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are not medically recognized as ethical or acceptable.
- VIII. When, except as between legally married spouses, the victim is mentally defective and the actor knows or has reason to know that the victim is mentally defective.
- IX. When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist.
- X. When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and:
 - (a) The actor is a member of the same household as the victim; or
 - (b) The actor is related by blood or affinity to the victim.
- X-a. When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.
- XI. When the victim is less than thirteen years of age.

632-A:3 Felonious Sexual Assault. A person is guilty of a class B felony if he:

- I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2; or
- II. Engages in sexual penetration with a person other than his legal spouse who is 13 years of age or older and under 16 years of age; or
- III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.

632-A:4 Sexual Assault. A person is guilty of a misdemeanor if he subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2

632-A:5 Spouse as Victim; Evidence of Husband and Wife. An actor commits a crime under this chapter even though the victim is the actor's legal spouse. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter.

632-A:6 Testimony and Evidence. The testimony of the victim shall not be required to be corroborated in prosecutions under this chapter. Prior consensual sexual activity between the victim and any person other than the actor shall not be admitted into evidence in any prosecution under this chapter.

632-A:8 In Camera Testimony. In the cases where the victim is under 16 years of age, the victim's testimony shall be heard in camera unless good cause is shown by the defendant. The record of the victim's testimony shall not be sealed and all other testimony and evidence introduced during the proceeding shall be public.

632-A:9 Speedy Trial. In any action under this chapter involving a victim 13 years of age or under or a victim 65 years of age or older, the court and the department of justice shall take appropriate action to ensure a speedy trial to minimize the length of time the victim must endure the stress of involvement in the proceeding. In ruling on any motion or request for a delay or continuance of proceedings, the court shall consider any adverse impact the delay or continuance may have on the well-being of the victim or any witness who is 13 years of age or under or 65 years of age or older. This provision establishes a right to a speedy trial for the victim and shall not be construed as creating any additional rights for the defendant.

632-A:10 Prohibition from Child Care Service of Persons Convicted of Certain Offenses.

- I. A person is guilty of a class A felony if, having been convicted in this or any other jurisdiction of any felonious offense involving child pornography, or of a felonious physical assault on a minor, or of any sexual assault, he knowingly undertakes employment or volunteer service involving the care, instruction or guidance of minor children, including, but not limited to, service as a teacher, a coach, or worker of any type in child athletics, a day care worker, a boy or girl scoutmaster or leader or worker, a summer camp counselor or worker of any type, a guidance counselor, or a school administrator of any type.
- II. A person is guilty of a class B felony if, having been convicted in this or any other jurisdiction of any of the offenses specified in paragraph I of this section, he knowingly fails to provide information of such conviction when applying or volunteering for service or employment of any type involving the care, instruction, or guidance of minor children, including, but not limited to, the types of services set forth in paragraph I.
- III. A person is guilty of a class B felony if, having been convicted in this or any other jurisdiction or any of the offenses specified in paragraph I of this section, he knowingly fails to provide information of such conviction when making application for initial teacher certification in this state.

632-A:11 Definitions. In this subdivision:

- I. "Department" means the department of safety.
- II. "Division" means the division of state police, department of safety.
- III. "Sexual offender" means a person who has been convicted of any violation of:
 - (a) RSA 632-A:2, RSA 632-A:3 or RSA 632-A:4; or
 - (b) A law of another state or the federal government reasonably equivalent to a violation listed in subparagraph (a).
- IV. "Local law enforcement agency" means the chief of police in the city or town where the person resides or is temporarily domiciled, or, if the municipality has no police chief or if the person resides in an unincorporated place, the sheriff of the county where the person resides.

632-A:12 Registration.

- I. Every sexual offender as defined in RSA 632-A:11, III, shall be registered with the department of safety, division of state police, as provided in this subdivision.
- II. Upon receipt of information pursuant to RSA 106-B:14 concerning the conviction of any sex offender, the division shall register such person and shall include the relevant information in the law enforcement name search (LENS) system.
- III. Upon receipt from any out-of-state law enforcement agency of information that a sex offender as defined in RSA 632-A:11, III(b) has moved to New Hampshire, the division shall register such person and shall include the relevant information in the LENS system.

632-A:13 Release of Sexual Offender into the Community; Duties.

- I. Upon release of any sexual offender after conviction, whether on probation, parole, conditional or unconditional release, completion of sentence, or for any other reason, the official in charge of such release shall notify the person of his duty to report under this subdivision. ~~The person shall acknowledge in writing that he has received such notice.~~ The official shall obtain the address at which the person expects to reside upon release and shall report such address to the department. The department shall inform the local law enforcement agency where the person expects to reside. The division shall enter the information concerning the person's release and notification in the LENS system.
- II. Upon receipt from any out-of-state law enforcement agency of information that a sex offender as defined in RSA 632-A:11, III(b) has moved to New Hampshire, the department shall locate and shall serve notice upon such person of his duty to report, under this subdivision. The person shall acknowledge in writing that he has received such notice. The department shall obtain the address at which the person expects to reside and shall inform the local law enforcement agency. The division shall enter the information concerning the person's location in New Hampshire and notification in the LENS system.

632-A:14 Duty to Report. Any person required to be registered under this subdivision shall be required to report his current mailing address and place of residence or temporary domicile to the local law enforcement agency. Such report shall be made annually within 30 days after each anniversary of the person's date of release from custody following conviction, or after each anniversary of the person's date of establishment of residence in New Hampshire if convicted elsewhere, and additionally within 30 days after any change of address or place of residence. Forms for reporting shall be provided by the department to each municipal police and county sheriff department, and shall include a copy to be receipted and returned to the person filing the report and a copy to be forwarded to the division. The division shall include such address report information in the LENS system, and shall also use the information to maintain a current address in the person's criminal record as maintained under RSA 106-B:14.

632-A:15 Change of Address; Duty to Inform. When any person required to be registered under this subdivision changes his residence he shall give written notification

of his new address to the local law enforcement agency to which he last reported under RSA 632-A:14 within 10 days of such change of residence. Such notice shall not relieve the person of his duty to report under RSA 632-A:14 at the new place of residence. The local law enforcement agency receiving such notice shall forward a copy to the division within 3 days after receipt. The division shall notify the local law enforcement agency at the new place of residence, or the appropriate out-of-state law enforcement agency if the new place of residence is outside New Hampshire, and shall include such change-of-address information in the LENS system.

632-A:16 Duration of Registration.

- I. Any sexual offender convicted of a violation of RSA 632-A:2 or 632-A:3, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for life.
- II. Any sexual offender convicted of a violation of RSA 632-A:4, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for a 10-year period from the date of release following conviction, provided that any such registration period shall ~~not run concurrently with any registration period resulting from a subsequent~~ conviction.

632-A:17 Confidentiality. Any records established or information collected pursuant to the provisions of this subdivision shall be classified as confidential under RSA 91-A:5, IV and shall be made available only to law enforcement officials and their authorized designees or to the individual requesting his own record in the LENS system. However, nothing in this section shall be construed to limit access to a person's criminal record under the provisions of RSA 106-B:14, including address information obtained under the provisions of this subdivision.

632-A:18 Rules. The department shall adopt rules, pursuant to RSA 541-A, relative to forms and procedures for the administration of this subdivision.

632-A:19 Penalty.

- I. A sexual offender who negligently fails to report when required to do so under this subdivision shall be guilty of a violation.
- II. A sexual offender who knowingly fails to report when required to do so under this subdivision shall be guilty of a misdemeanor.
- III. Any person who violates the provisions of RSA 632-A:17 shall be guilty of a violation.

EXHIBIT 2

CHAPTER 135

HOUSE BILL - FINAL VERSION

HB 537

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand
nine hundred and ninety-three

AN ACT

relative to registration of sexual offenders.

Be it Enacted by the Senate and House of Represen-
tatives in General Court convened:

135:1 Applicability of Subdivision; Registration of Sexual Offenders. Notwithstanding 1992, 213:2, RSA 632-A:11 - RSA 632-A:19, requiring registration of sexual offenders, shall apply to any sexual offender, irrespective of the date of conviction of the offense, who:

I. Is released into the community as provided in RSA 632-A:13 on or after the effective date of this act; or

II. Has been released but has not completed his sentence before the effective date of this act; or

III. Has completed his sentence not more than 6 years before the effective date of this act.

135:2 Severability. If any provision of this act or application thereof to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or

applications, and to this end the provisions are severable.

135:3 Effective Date.

I. Paragraph III of section 1 of this act shall take effect January 1, 1994.

II. The remainder of this act shall take effect 60 days after its passage.

Approved: May 17, 1993

Effective: I. Paragraph III of section 1 shall take effect January 1,

1994. II. The remainder shall take effect July 16, 1993.

EXHIBIT 3

[1996 – 293:1] [effective August 9, 1996]
[* see 293:3 for applicability for convicted dates]

CHAPTER 651-B
Registration Of Criminal Offenders

651-B:1 Definitions. In this chapter:

- I. "Department" means the department of safety.
- II. "Division" means the division of state police, department of safety.
- III. "Sexual offender" means a person who has been convicted of any violation or attempted violation of:
 - (a) RSA 632-A:2, 632-A:3, 632-A:4, or 645:1, II; or
 - (b) A law of another state or the federal government reasonably equivalent to a violation listed in subparagraph (a).
- IV. "Local law enforcement agency" means the chief of police in the city or town where the person resides or is temporarily domiciled, or, if the municipality has no police chief or if the person resides in an unincorporated place, the sheriff of the county where the person resides.
- V. "Offender against children" means a person who has been convicted of any violation or attempted violation of:
 - (a) Any of the following offenses, where the victim was under the age of 18 at the time of the offense, RSA 633:1, 633:2, 633:3 or 645:2; or
 - (b) RSA 169-B:41, II, 639:3, III, 649-A:3 or 650:2, II; or
 - (c) A law of another state or the federal government reasonably equivalent to a violation listed in subparagraph (a) or (b).
- VI. "LENS system" means the law enforcement name search system.

651-B:2 Registration.

- I. Every sexual offender or offender against children shall be registered with the department of safety, division of state police, as provided in this subdivision.
- II. Upon receipt of information pursuant to RSA 106-B:14 concerning the conviction of any sex offender or offender against children, the division shall register such person and shall include the relevant information in the law enforcement name search (LENS) system.
- III. Upon receipt from any out-of-state law enforcement agency of information that a sex offender or offender against children has moved to New Hampshire, the division shall register such person and shall include the relevant information in the LENS system.

651-B:3 Release of Certain Sexual Offenders Into the Community; Duties.

- I. Upon release of any sexual offender or offender against children after conviction, whether on probation, parole, conditional or unconditional release, completion of sentence, or for any other reason, the official in charge of such release shall notify the

offender of the offender's duty to report under this chapter. The offender shall acknowledge in writing that he has received such notice. The official shall obtain the address at which the offender expects to reside upon release and shall report such address to the department. The department shall inform the local law enforcement agency where the offender expects to reside. The division shall enter the information concerning the offender's release and notification in the LENS system.

- II. Upon receipt from any out-of-state law enforcement agency of information that a sex offender or offender against children has moved to New Hampshire, the department shall locate and shall serve notice upon such offender of the offender's duty to report under this chapter. The offender shall acknowledge in writing that the offender has received such notice. The department shall obtain the address at which the offender expects to reside and shall inform the local law enforcement agency. The division shall enter the information concerning the offender's location in New Hampshire and notification in the LENS system.

651-B:4 Duty to Report.

- I. Any person required to be registered under this chapter shall be required to report such person's current mailing address and place of residence or temporary domicile to the local law enforcement agency within 30 days after the person's release from custody following conviction, or within 30 days after the person's date of establishment of residence in New Hampshire if convicted elsewhere. Such report shall also be made annually within 30 days after each anniversary of the person's date of release from custody following conviction, or after each anniversary of the person's date of establishment of residence in New Hampshire if convicted elsewhere, and additionally within 30 days after any change of address or place of residence. Forms for reporting shall be provided by the department to each municipal police and county sheriff department, and shall include a copy to be receipted and returned to the person filing the report and a copy to be forwarded to the division. The division shall include such address report information in the LENS system, and shall also use the information to maintain a current address in the person's criminal record as maintained under RSA 106-B:14.
- II. In addition to the requirements imposed under paragraph I of this section, the following provisions shall apply to any sexual offender or offender against children who is sentenced to an extended term of imprisonment pursuant to RSA 651:6, I(b):
 - (a) Every 90 days after the date of the offender's initial release or commencement of parole, the department shall mail a nonforwardable verification form to the offender's last reported address.
 - (b) The offender shall mail the verification form to the department within 10 days after receipt of the form.
 - (c) The verification form shall be signed by the offender, and state that the offender still resides at the address last reported to the local law enforcement agency.

651-B:5 Change of Address; Duty to Inform. When any person required to be registered under this chapter changes residence, the person shall give written notification of the person's new address to the local law enforcement agency to which he last reported

under RSA 651-B:4 within 10 days of such change of residence. Such notice shall not relieve the person of the duty to report under RSA 651-B:4 at the new place of residence. The local law enforcement agency receiving such notice shall forward a copy to the division within 3 days after receipt. The division shall notify the local law enforcement agency at the new place of residence, or the appropriate out-of-state law enforcement agency if the new place of residence is outside New Hampshire, and shall include such change-of-address information in the LENS system.

651-B:6 Duration of Registration.

- I. Any sexual offender convicted of a violation or attempted violation of RSA 632-A:2 or 632-A:3, and any offender against children convicted of a violation or attempted violation of RSA 169-B:41, II, 633:1, 633:2, 639:3, III, 645:2, II, 649-A:3, I, or 650:2, II, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for life.
- II. Any sexual offender convicted of a violation or attempted violation of RSA 632-A:4 or RSA 645:1, II, and any offender against children convicted of a violation or attempted violation of RSA 633:3, 645:2, I or 649-A:3, III, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for a 10-year period from the date of release following conviction, provided that any such registration period shall not run concurrently with any registration period resulting from a subsequent conviction.
- III. Notwithstanding the provisions of paragraph II, any sexual offender or offender against children who is sentenced to an extended term of imprisonment pursuant to RSA 651:6, I(b) shall be registered for life.

651-B:7 Confidentiality.

- I. Any records established or information collected pursuant to the provisions of this chapter shall be classified as confidential under RSA 91-A:5, IV and shall be made available only to law enforcement officials and their authorized designees or to the individual requesting the individual's own record in the LENS system. However, nothing in this section shall be construed to limit access to a person's criminal record under the provisions of RSA 106-B:14, including address information obtained under the provisions of this chapter.
- II.
 - (a) Notwithstanding paragraph I, a law enforcement agency may notify organizations in the community where the person intends to reside when a person convicted of a violation of RSA 632-A:2, I(1) or RSA 632-A:2, II or of an equivalent offense in an out-of-state jurisdiction registers under this chapter unless a qualified order has been issued by the Merrimack county superior court. In this section, "organization" shall include but shall not be limited to schools, youth groups, day care centers, summer camps, libraries, or any other organization where children gather and are supervised by persons in the organization.
 - (b) The law enforcement agency may notify an organization pursuant to subparagraph (a) 10 days after registration unless notified by the petitioner of the filing of a

petition for a qualifying order with the Merrimack county superior court. If a petition for a qualifying order is filed, the law enforcement agency may not notify an organization until 30 days after a final order from the superior court unless a notice of appeal by the petitioner is filed with the supreme court. If a notice of appeal is filed with the supreme court, the law enforcement agency may not notify an organization until 10 days after an order from the supreme court authorizing release of information pursuant to subparagraph (a).

- (c) A law enforcement agency may provide an organization with the following information concerning a person convicted of a violation of RSA 632-A:2, I(1) or RSA 632-A:2, II or of an equivalent offense in an out-of-state jurisdiction:
 - (1) Name and address of the individual.
 - (2) A recent photograph of the individual, if available.
 - (3) The offense for which the individual was convicted.
 - (4) The method of approach the individual has utilized.
 - (5) Information on the profile of previous victims of his offenses.
- (d) The law enforcement agency may utilize a form developed by the department of safety for the dissemination of information.

III.

- (a) A qualified order may be issued only if the individual has filed a petition for a qualified order with the superior court no later than 10 calendar days after registration with the local law enforcement agency.
- (b) The court shall give such petition priority on the court calendar. The court shall rule upon the petition within 10 business days of the submission of all evidence and memoranda by the parties.
- (c) The court shall issue a qualified order if the court finds by clear and convincing evidence that the risk of reoffending is low. In reaching its finding the superior court may consider, but not be limited to, the following:
 - (1) Circumstances of the petitioner's release which minimize the risk of reoffending including, but not limited to, whether:
 - (A) The petitioner is under the supervision of probation or parole;
 - (B) The petitioner is receiving counseling, therapy, or treatment; or
 - (C) The petitioner is residing in a home situation that provides guidance and supervision.
 - (2) Whether the petitioner's physical condition minimizes the risk of reoffending including, but not limited to, whether the petitioner is of advanced age or suffers from a debilitating illness.
 - (3) Factors present in the criminal history of the petitioner which are indicative of a high risk of reoffending including, but not limited to, the following:
 - (A) Whether the petitioner's illegal conduct was found to be repetitive.
 - (B) The number, date, and nature of the petitioner's prior criminal convictions
 - (4) Any history of substance abuse on the part of the petitioner.
 - (5) The petitioner's response to treatment.
 - (6) The petitioner's recent behavior, including behavior while confined or while under supervision in the community as well as behavior in the community following completion of sentence.

- (d) The rules of evidence shall not apply to proceedings under this section. The proceedings shall be conducted in camera. The pleadings filed pursuant to this section shall be sealed if the court finds by clear and convincing evidence that disclosure beyond law enforcement is not warranted, unless the attorney general takes a timely appeal from the court's ruling in which case the records may be utilized for purposes of the appeal and as necessary to effectuate any order issued by the supreme court.
- IV. The law enforcement agency shall not release information concerning the sex offender to organizations when it has received notice of the filing of the petition. The agency shall not disseminate information to such organizations until a court has denied the petition and either the period for the filing of a notice of appeal has expired without the filing of the notice of appeal by the petitioner or the supreme court has found against the petitioner on the merits of the petition. The burden is upon the petitioner to notify the law enforcement agency of the intention to file a petition, as well as the filing of a notice of appeal with the supreme court.
- V. It is the responsibility of each organization that receives information concerning a registered sex offender to take appropriate steps to educate and alert staff members who are charged with the care and supervision of children. This information may only be used for the purpose of protecting the children in the charge of the organization and its staff. Information is not to be used to provide notification to the community at large.
- VI. Notwithstanding any provision of law to the contrary, petitions shall be filed in the Merrimack county superior court. The office of attorney general shall respond to all petitions filed under this section and shall be served with copies of any petition filed. If the petitioner moves to a different city or town within the state before a determination is made on the merits of the petition, the petitioner shall either amend the filed petition or withdraw the petition.
- VII. A court order granting or denying a qualified order issued in compliance with RSA 651-B:7, III, shall be binding upon both the petitioner and law enforcement agencies of the state for a period of 10 years and shall estop the relitigation of that order in the event that the offender relocates to a different jurisdiction within the state during that period of time.
- VIII. Notwithstanding any other provision of law to the contrary, any person other than the sex offender who makes or fails to make a disclosure of information as authorized by paragraph II(c) or V shall not be liable in any civil or criminal action. Nothing in this section shall be deemed to grant any such immunity to any person for that person's reckless or wanton act of commission or omission.

651-B:8 Rules. The department shall adopt rules, pursuant to RSA 541-A, relative to forms and procedures for the administration of this chapter.

651-B:9 Penalty.

- I. A sexual offender or offender against children who negligently fails to comply with the requirements of this chapter shall be guilty of a violation.
- II. A sexual offender or offender against children who knowingly fails to comply with the requirements of this chapter shall be guilty of a misdemeanor.

III. Any person who violates the provisions of RSA 651-B:7 shall be guilty of a violation.

EXHIBIT 4

651-B:7 Availability of Information to the Public.

- I. Except as provided in this section, the records established and information collected pursuant to the provisions of this chapter shall not be considered "public records" subject to inspection under RSA 91-A:4. However, nothing in this chapter shall be construed to limit any law enforcement agency from making any use or disclosure of any such information as may be necessary to the performance of a valid law enforcement function. Nothing in this chapter shall be construed to limit an individual's ability to obtain access to the individual's own records, or to limit access to a person's criminal record under the provisions of RSA 106-B:14, including ~~address information obtained under the provisions of this chapter.~~
- II.
 - (a) The division shall maintain a separate list of all individuals registered pursuant to this chapter who have been convicted of any violation or attempted violation of one of the following offenses, or of any law of another state or the federal government reasonably equivalent to one of the following offenses:
 - (1) RSA 632-A:2, I(1).
 - (2) RSA 632-A:2, II.
 - (3) RSA 632-A:3, III.
 - (4) RSA 645:1, II.
 - (5) Any offense described in RSA 651-B:1, V.
 - (b)
 - (1) The list described in subparagraph (a) shall include:
 - (A) The name and address of the registered individual;
 - (B) The offense for which the individual was convicted; and
 - (C) The date and court of the conviction for which the individual is registered.
 - (2) Where such information is available, the list may also include:
 - (A) A photograph or physical description of the individual;
 - (B) The date and court of the individual's other convictions, if any;
 - (C) Information on the profile of the victim or victims of the individual's offense or offenses; and
 - (D) The method of approach utilized by the individual.
 - (3) In no event shall the list include the identity of any victim.
- III. At periodic intervals, not less frequently than once each month, the commissioner of the department of corrections and the superintendent of each county department of corrections shall forward to the division a statement identifying every offender who is

confined in a facility under their control who has committed an offense described in subparagraph II(a), and who is eligible at that time for any unsupervised work detail or other assignment which may bring the offender into contact with members of the public. These statements shall include the information set forth in subparagraphs II(b)(1)(A), (B), and (C), and may also include the information set forth in subparagraphs II(b)(2)(A)-(D). In no event shall the statements include the identity of any victim. These statements shall be incorporated by the division into the list maintained under paragraph II.

- IV. The division shall forward a copy of the list described in this section to each local law enforcement agency at periodic intervals, but in no event less frequently than once each month. The list shall be made available to interested members of the public upon request to the local law enforcement agency. The department shall adopt rules, pursuant to RSA 541-A, establishing procedures for the collection of information described in this section, the transmission of the information from the division to the local law enforcement agencies, and the conditions under which the list shall be made available to the public. These rules shall enable the public to request information about a named individual or about all listed individuals residing or confined in a specified city or town. The rules shall also include provisions for identifying and maintaining a record of the parties to whom information from the list has been disclosed, and may also provide for the imposition of a reasonable fee to defray the administrative costs of collecting the information and making the information available to the public.
- V. Local law enforcement agencies, employees of local law enforcement agencies, and county and state officials shall be immune from civil and criminal liability for good faith conduct under this chapter. Nothing in this paragraph shall be deemed to grant any such immunity to any person for that person's reckless or wanton conduct.

651-B:8 Rules. The department shall adopt rules, pursuant to RSA 541-A, relative to forms and procedures for the administration of this chapter.

651-B:9 Penalty.

- I. A sexual offender or offender against children who negligently fails to comply with the requirements of this chapter shall be guilty of a violation.
- II. A sexual offender or offender against children who knowingly fails to comply with the requirements of this chapter shall be guilty of a misdemeanor.
- III. Any person who violates the provisions of RSA 651-B:7 shall be guilty of a violation.