

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAUL MURPHY, et al.,)	
)	
Plaintiffs,)	No. 16 CV 11471
)	
v.)	Judge Virginia M. Kendall
)	
LISA MADIGAN, Attorney General)	
of Illinois, and JOHN BALDWIN, Director)	
of the Illinois Department of Corrections)	
)	
Defendants.)	

**DEFENDANTS’ ANSWER TO PLAINTIFFS’
CLASS ACTION COMPLAINT AND AFFIRMATIVE DEFENSES**

The Defendants, Lisa Madigan, Attorney General of Illinois; and John Baldwin, Director of the Illinois Department of Corrections; by their attorney, the Illinois Attorney General, hereby answer Plaintiffs’ Class Action Complaint as follows:

Nature of the Case¹

1. This case, which arises under 42 U.S.C. § 1983, challenges the constitutionality of a legal scheme whereby individuals who have been convicted of certain sex-related crimes end up serving life sentences behind prison bars as the result of the interactions of various state laws and state agency regulations promulgated by three distinct entities—the Illinois legislature, the Prison Review Board (“PRB”), and the Illinois Department of Corrections (“IDOC”). In particular, individuals convicted of sex-related crimes who are sentenced to three years to life of mandatory supervised release (“MSR”) find themselves stuck in prison for life as a result of the imposition of

¹ All headings, sub-headings, and footnotes are reproduced from the Plaintiffs’ Complaint for the convenience of the Court and the parties and are not admissions.

unmeetable restrictions on where they can live that must be satisfied in order for such individuals to be released on MSR. The challenged scheme results in what amounts to a Kafkaesque nightmare whereby these individuals are denied any semblance of proportionality in their prison sentences and due process of law.

ANSWER: Defendants admit that Plaintiffs purport to challenge various statutes, regulations, and policies related to MSR for individuals who have been convicted of certain sex-related crimes. Defendants deny all remaining allegations of Paragraph 1.

2. This is an action for declaratory and injunctive relief. Plaintiffs, individually and on behalf of the classes they seek to represent, allege violations of their rights under the Eighth and Fourteenth Amendment of the United States Constitution.

ANSWER: Defendants admit that Plaintiffs purport to seek declaratory and injunctive relief, both individually and on behalf of a purported class. Defendants deny that Plaintiffs are entitled to any relief whatsoever, deny that a class should be certified in this matter, and deny all remaining allegations of Paragraph 2.

3. As of the filing of this complaint, there are approximately 4,000 people imprisoned in the Illinois Department of Corrections who have been convicted of sex-related offenses for which state law imposes an indeterminate term of “three years to life” of Mandatory Supervised Release (“MSR”) (formerly known as parole).

ANSWER: Defendants deny the allegations of Paragraph 3. Based on IDOC records, as of October 3, 2017, there were 2,343 inmates in IDOC custody with an MSR of three years to life.

4. As set forth below, Illinois laws severely restrict where individuals deemed sex offenders may live while on MSR. As a result, the vast majority of such prisoners are unable to

find approved “host sites” at which to serve their MSR terms. Because of the unavailability of compliant housing, such prisoners are detained in the Illinois Department of Corrections long after they have served the term of imprisonment to which they have been sentenced. For individuals with indeterminate MSR sentences, their prison terms are in effect converted to sentences of lifetime imprisonment without any possibility of release.

ANSWER: Defendants admit that Illinois law restricts where sex offenders on MSR may live. Defendants further admit that sex offenders may not be released until they submit a suitable host site at which to serve their MSR terms. Defendants deny all remaining allegations of Paragraph 4.

5. The named Plaintiffs are individuals currently being held in the custody of the Illinois Department of Corrections who have been sentenced to serve “three years to life” MSR terms and are unable to find “host sites.” Plaintiffs, individually and on behalf of two classes of similarly situated individuals (identified below), challenge the constitutionality of the statutory schemes that cause this severe deprivation of their constitutional right to liberty.

ANSWER: Defendants admit that the named Plaintiffs have been sentenced to serve “three years to life” MSR terms. Defendants deny that Plaintiff Smith is unable to find a suitable host site, as he was released on MSR on January 24, 2017. Defendants lack knowledge or information sufficient to form a belief as to whether the other named Plaintiffs are unable to find a suitable host site. Defendants admit that Plaintiffs purport to seek relief, both individually and on behalf of a purported class. Defendants deny that Plaintiffs are entitled to any relief whatsoever, deny that a class should be certified in this matter, and deny all remaining allegations of Paragraph 5.

Jurisdiction and Venue

6. Jurisdiction for Plaintiffs' federal claims is based on 28 U.S.C. §§ 1331 and 1343(a).

ANSWER: Defendant admits that the United States District Court for the Northern District of Illinois has jurisdiction over proper lawsuits brought under 42 U.S.C. §§ 1983. Defendant denies all remaining allegations of Paragraph 6.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), in that the claims arose in this district as alleged below.

ANSWER: Defendants admit that venue is proper.

The Parties

8. Defendant Attorney General Lisa Madigan is sued in her official capacity as the Attorney General of the State of Illinois. The Attorney General of the State of Illinois is responsible for executing and administering the laws of the State of Illinois and is charged with advising state's attorneys throughout the state.

ANSWER: Defendants admit that the Attorney General is sued in her official capacity, and further admit that the Attorney General is charged with advising state's attorney's throughout the state. Defendants admit that the Attorney General is responsible for enforcing certain laws as provided by statute, and for administering the provisions of certain laws; including the Crime Victims Compensation Act (740 ILCS 45/1 et seq.), Violent Crime Victims Assistance Act (725 ILCS 240/1 et seq.), Charitable Trust Act (760 ILCS 55/1 et seq.), Solicitation for Charity Act (225 ILCS 460/1 et seq.), and Franchise Disclosure Act of 1987 (815 ILCS 705/1 et seq.); but deny that the Attorney General is responsible for executing and administering every law of the State of Illinois.

9. Under Illinois law, Defendant Madigan has the authority to participate in and assist with criminal prosecutions, including charges under the statutes challenged herein. Defendant Madigan also has the authority to consult with and advise Illinois State's Attorneys concerning criminal prosecutions. (See 15 ILCS 205/4).

ANSWER: Defendants admit the allegations of Paragraph 9.

10. Defendant Madigan has been and continues to be directly involved in the enforcement of the statutory schemes at issue in this case by defending the statutes in state court criminal appeals.

ANSWER: Defendants admit the allegations of Paragraph 10.

11. Defendant John Baldwin is sued in his official capacity as director of the Illinois Department of Corrections. In his capacity as the director of IDOC, he has final authority to set the Department of Corrections' policies and practices with regard to approval of prisoners' "host sites" for MSR.

ANSWER: Defendants admit that Director Baldwin is sued in his official capacity as Director of the Illinois Department of Corrections ("IDOC"). Defendants further admit that Director Baldwin has authority to set IDOC policies and practices with regard to approval of prisoners' "host sites" for MSR, but that authority is limited by the various statutes that apply and by the requirement that the IDOC comply with the MSR conditions set by the PRB.

12. Plaintiff Paul F. Murphy is a prisoner at Taylorville Correctional Center in Taylorville, Illinois, and a registered sex offender. He has completed his three-year prison term. The PRB approved Murphy for release on MSR on March 3, 2014. To date, the IDOC has not released Murphy from prison because he cannot find an approved "host site" at which to serve his

MSR. Murphy has no money to pay for housing and no family members outside of prison who could help him pay for housing. The state of Illinois provides no transitional housing for sex offenders who cannot afford their own housing while on MSR. IDOC will not release a homeless individual on MSR. Because his MSR term is indefinite, Murphy remains in Taylorville Correctional Center with no foreseeable possibility of release.

ANSWER: Defendants admit that Murphy is in IDOC custody at Taylorsville Correctional Center, and further admit that Murphy is a registered sex offender based on his 2011 conviction for aggravated child pornography. Defendants admit that the PRB approved Murphy for release on MSR on March 3, 2014 after Murphy completed his initial three-year prison term, and further admit that the IDOC has not released Murphy from prison because he has not submitted an acceptable host site at which to serve his MSR. Defendants lack knowledge or information sufficient to form a belief as to whether Murphy is unable to find a suitable host site, whether he has money to pay for housing, and whether he has family members who could assist him in securing housing. Defendants admit that the State of Illinois cannot directly provide transitional housing for sex offenders who cannot afford their own housing while on MSR, and while the IDOC has made substantial efforts to secure vendors to provide such housing, those efforts have been largely unsuccessful for various reasons. Defendants further admit that IDOC does not release individuals on MSR unless they have submitted an acceptable host site. Defendants deny all remaining allegations of Paragraph 12.

13. Plaintiff Stanley Meyer is a prisoner at Taylorville Correctional Center in Taylorville, Illinois, and a registered sex offender. He has completed his four-year prison term. The PRB approved Meyer for release on MSR on May 12, 2011. To date, the IDOC has not

released Meyer from prison because he cannot find an approved “host site” at which to serve his MSR. Meyer has no money to pay for housing and no family members outside of prison who could help him pay for housing. Because his MSR term is indefinite, Meyer remains in Taylorville Correctional Center with no foreseeable possibility of release.

ANSWER: Defendants admit that Meyer is in IDOC custody at Taylorsville Correctional Center, and further admit that Meyer is a registered sex offender based on his 2008 conviction for criminal sexual assault where the victim was unable to consent. Defendants admit that the PRB approved Meyer for release on MSR on May 12, 2011 after Meyer completed his initial four-year prison term, and further admit that the IDOC has not released Meyer from prison because he has not submitted an acceptable host site at which to serve his MSR. Defendants lack knowledge or information sufficient to form a belief as to whether Meyer is unable to find a suitable host site, whether he has money to pay for housing, and whether he has family members who could assist him in securing housing. Defendants deny all remaining allegations of Paragraph 13.

14. Plaintiff J.D. Lindenmeier is a prisoner at Taylorville Correctional Center in Taylorville, Illinois, and a registered sex offender. He has completed his six-year prison term. The PRB approved Lindenmeier for release on MSR on July 18, 2011. To date, the IDOC has not released Lindenmeier from prison because he cannot find an approved “host site” at which to serve his MSR. As set forth below, Lindenmeier’s family members have made substantial efforts to find a “host site” that will meet IDOC’s approval. Lindenmeier has proposed six different host sites with various family members who are willing to take him in and assist in his successful compliance with MSR terms and reintegration into society. IDOC has rejected all of these

proposed sites. Lindenmeier has no other options. Because his MSR term is indefinite, Lindenmeier remains in Taylorville Correctional Center with no foreseeable possibility of release.

ANSWER: Defendants admit that Lindenmeier is in IDOC custody at Taylorville Correctional Center, and further admit that Meyer is a registered sex offender based on his 2007 conviction for predatory criminal sexual assault where the victim was under the age of 18. Defendants admit that the PRB approved Lindenmeier for release on MSR on July 18, 2011 after Lindenmeier completed his initial prison term, but deny that he was initially approved for release on May 12, 2011. Defendants admit that Lindenmeier has submitted six proposed host sites that were unacceptable for various reasons, and further admit that the IDOC has not released Lindenmeier from prison because he has not submitted an acceptable host site at which to serve his MSR. Defendants lack knowledge or information sufficient to form a belief as to whether Lindenmeier is unable to find a suitable host site, the alleged efforts of Lindenmeier's family members to secure housing for him, or Lindenmeier's remaining options for acceptable housing. Defendants deny all remaining allegations of Paragraph 14.

15. Plaintiff Keenon Smith is a prisoner at Pinckneyville Correctional Center in Pinckneyville, Illinois, and a registered sex offender. He has completed his five-year prison term. The PRB approved Smith for release on MSR on November 4, 2016. To date, the IDOC has not released Smith from prison because he cannot find an approved "host site" at which to serve his MSR. As set forth below, Smith's mother has made substantial efforts to find a "host site" that will meet IDOC's approval, but to no avail. Smith's mother is an elementary school teacher. She is willing to take Smith into her home or pay for his housing elsewhere. Smith's mother has proposed at least 12 different host sites in Chicago and the suburbs. IDOC has rejected all of these

proposed sites. Because his MSR term is indefinite, Smith remains in Pinckneyville Correctional Center with no foreseeable possibility of release.

ANSWER: Defendants admit that Smith was formerly in IDOC custody at Pinckneyville Correctional Center, and further admit that Smith is a registered sex offender based on his 2012 conviction for criminal sexual assault with the use of force, and aggravated criminal sexual assault, where the victim was 12 years of age. Defendants admit that the PRB approved Smith for release on MSR on November 4, 2016 after Smith completed his initial five-year prison term, and further admit that Smith submitted twelve proposed host sites that were unacceptable for various reasons. Defendants deny that Smith is still in IDOC custody; Smith submitted an acceptable host site and was released on MSR on January 24, 2017. Defendants lack knowledge or information sufficient to form a belief regarding the Smith's mother's profession or her efforts to secure housing for Smith. Defendants deny all remaining allegations of Paragraph 15.

16. Plaintiff Jasen Gustafsen is a prisoner at Lincoln Correctional Center in Lincoln, Illinois, and a registered sex offender. He has completed his four-year prison term. The PRB approved Gustafsen for release on MSR on October 19, 2014. To date, the IDOC has not released Gustafsen from prison because he cannot find an approved "host site" at which to serve his MSR. As set forth below, Gustafsen has no financial resources of his own and no family members who are able to pay for his housing outside of prison. His only options for housing outside of prison are staying with his mother or his aunt. Gustafsen has proposed his mother's and aunt's residences as "host sites." IDOC has rejected both of these proposed Sites. Because his MSR term is indefinite, Gustafsen remains in Lincoln Correctional Center with no foreseeable possibility of release.

ANSWER: Defendants admit that Jasen Gustafson (misspelled in Paragraph 16) is in IDOC custody at Lincoln Correctional Center, and further admit that Gustafson is a registered sex offender based on his 2013 conviction for aggravated child pornography. Defendants admit that the PRB approved Gustafson for release on MSR on October 19, 2014 after Gustafson completed his initial four-year prison term, admit that Gustafson has submitted two proposed host sites that were unacceptable for various reasons, and further admit that the IDOC has not released Gustafson from prison because he has not submitted an acceptable host site at which to serve his MSR. Defendants lack knowledge or information sufficient to form a belief as to Gustafson's financial resources, whether Gustafson is unable to find a suitable host site, or Gustafson's remaining options for acceptable housing. Defendants deny all remaining allegations of Paragraph 16.

17. Plaintiff Alfred Aukema is a prisoner at Taylorville Correctional Center in Taylorville, Illinois, and a registered sex offender. He is scheduled to complete his five-year prison sentence on September 7, 2017. Plaintiff Aukema has no financial resources to afford to pay for a "host site" and no friends or family outside of prison who can take him in or pay for his housing. Because his MSR term is indefinite, Aukema faces a likelihood of lifetime imprisonment due to the lack of available compliant housing and his inability to afford housing, if it were available, outside of prison.

ANSWER: Defendants admit that Aukema is in IDOC custody at Taylorsville Correctional Center, and further admit that Aukema is a registered sex offender based on his 2013 conviction for criminal sexual assault involving the use of force, where the victim was under the age of 18. Defendants admit that the PRB approved Aukema for release on MSR on September 7, 2017 after Aukema completed his initial prison term, and further admit that

the IDOC has not released Aukema from prison because he has not submitted an acceptable host site at which to serve his MSR. Defendants lack knowledge or information sufficient to form a belief as to whether Aukema is unable to find a suitable host site, whether he has money to pay for housing, and whether he has family members who could assist him in securing housing. However, Defendants note that Aukema has submitted three proposed host sites, which were unacceptable for various reasons. Defendants deny all remaining allegations of Paragraph 17.

18. Plaintiff Kevin Tucek is a prisoner at Taylorville Correctional Center in Taylorville, Illinois, and a registered sex offender. He is scheduled to complete his eight-year prison sentence on July 20, 2020. Plaintiff Tucek has no financial resources to afford to pay for a host site and no friends or family outside of prison who can take him in or pay for his housing. Because his MSR term is indefinite, Tucek faces a likelihood of lifetime imprisonment due to the unavailability of compliant housing and his inability to afford housing, if it were available, outside of prison.

ANSWER: Defendants admit that Tucek is in IDOC custody at Taylorsville Correctional Center, and further admit that Tucek is a registered sex offender based on his 2014 conviction for criminal sexual assault on a family member under the age of 18. Defendants admit that Tucek's projected release date is July 20, 2020, after he completes his initial sentence. Defendants lack knowledge or information sufficient to form a belief as to whether Tucek will be able to find a suitable host site, whether he will have money to pay for housing, and whether he has family members who could assist him in securing housing in 2020. Defendants deny all remaining allegations of Paragraph 18.

The Statutory Schemes At Issue

19. As described in the paragraphs below, individuals convicted of certain sex-related offenses are subject to numerous overlapping statutory and regulatory schemes that severely restrict where they can live and make it nearly impossible for them to satisfy the conditions required for release from prison on MSR.

ANSWER: Defendants admit that there are statutes and IDOC policies that limit where sex offenders on MSR may reside. Defendants deny all remaining allegations of Paragraph 19.

Statutes Requiring the Imposition of an Indefinite MSR Term

20. Illinois' Unified Code of Corrections provides that for all felony convictions, the sentencing court must impose a term of "parole or mandatory supervised release ... as part of the sentencing order." 730 ILCS 5/5-8-1(d).

ANSWER: Defendants admit the allegations of Paragraph 20.

21. Individuals convicted of "predatory criminal sexual assault of a child, aggravated criminal sexual assault, or criminal sexual assault" after July 1, 2005, or of "aggravated child pornography ... manufacture of child pornography, or dissemination of child pornography" after January 1, 2009, are subject to the mandatory imposition of an indeterminate term of MSR "rang[ing] from a minimum of three years to a maximum of the natural life." 730 ILCS 5/5-8-1(d)(4).

ANSWER: Defendants admit the allegations of Paragraph 21.

22. The Illinois Supreme Court has interpreted 730 ILCS 5/5-8-1(d)(4) to require sentencing courts to impose an indeterminate MSR period of "three years to life" rather than a determinate period within the range of three years to natural life. *People v. Reinhart*, 2012 IL 111719 (2012).

ANSWER: Defendants admit the allegations of Paragraph 22.

23. Under 730 ILCS 5/3-14-2.5(d), a person with an indeterminate MSR sentence of “three years to life” can only apply for termination of his MSR after successfully completing three years of MSR outside of prison. This is so because an application for release from indeterminate MSR must be “supported by a recommendation by the releasee’s supervising agent,” and a “supervising agent” is not appointed until the individual is actually released from prison. As a result, prisoners receive no credit for MSR time they serve while incarcerated and thus can never max out their MSR sentence—a condition widely known as “dead time.”

ANSWER: Defendants admit that a person with an indeterminate MSR sentence of “three years to life” can only apply for termination of his MSR after successfully completing three years of MSR outside of prison. Defendants deny all remaining allegations of Paragraph 23.

Conditions for Release from IDOC Custody on MSR

24. The Prison Review Board (“PRB”) is responsible for establishing release dates from prison for individuals deemed eligible for MSR and setting the conditions for release on MSR. 730 ILCS 5/3-3-1.

ANSWER: Defendants admit the allegations of Paragraph 24.

25. The Illinois Department of Corrections (“IDOC”) retains custody of all prisoners approved for release on MSR by the PRB and is charged with assuring that prisoners are in compliance with the conditions set by the PRB before they are released from an IDOC facility on MSR. 730 ILCS 5/3-14-2.

ANSWER: Defendants admit the allegations of Paragraph 25.

26. Under Illinois law, once the PRB approves a prisoner for release on MSR, such individuals have a due process interest in being released from imprisonment in an IDOC facility. *Murdock v. Walker*, No. 08 C 1142, 2014 WL 916992, at *6 (N.D. Ill. Mar. 10, 2014) (Durkin, J.).

ANSWER: Defendants admit that the case cited in Paragraph 26 holds that individuals approved for release on MSR have a due process interest in being released from imprisonment in an IDOC facility, but deny that the cited case is binding precedent on this Court, and deny all remaining allegations of Paragraph 26.

27. The fact that a prisoner is eligible for release on MSR because he has served his prison sentence and has been approved for release by the PRB does not necessarily mean the individual will be released from prison.

ANSWER: Defendants admit the allegations of Paragraph 27.

28. Rather, any prisoner granted release on MSR must meet conditions imposed by Illinois statutes and by the PRB before being released from prison. If such conditions are not met, the parolee will be detained in prison.

ANSWER: Defendants admit the allegations of Paragraph 28.

29. One condition of release from prison on MSR is having an approved “host site” at which to reside while serving the MSR term.

ANSWER: Defendants admit the allegations of Paragraph 29.

30. IDOC has the sole authority to approve or deny a prisoner’s proposed “host site” based on its assessment of whether it meets the conditions imposed by Illinois statutes and by the PRB.

ANSWER: Defendants admit the allegations of Paragraph 30.

31. If a prisoner lacks an approved host site, he will not be released from prison even if the PRB has found him eligible for release on MSR.

ANSWER: Defendants admit the allegations of Paragraph 31.

32. As shown below, the overlapping layers of restrictions imposed by statute and IDOC policy on where individuals deemed sex offenders can live, along with the lack of housing assistance for indigent prisoners, result in the vast majority of prisoners with a three-to-life MSR sentence being unable to find compliant housing and serving what amounts to life sentences in prison.

ANSWER: Defendants deny the allegations of Paragraph 32.

Residency Restrictions that Apply to All Individuals Classified as Child Sex Offenders

33. First, for IDOC to approve a host site for an individual sentenced to “three-to-life” MSR, the host site must comply with all of the restrictions imposed under Illinois law on where individuals deemed “child sex offenders” may reside.

ANSWER: Defendants admit the allegations of Paragraph 33.

34. 720 ILCS 5/11-9.3 (b-5) makes it unlawful “to knowingly reside within 500 feet of a school building or the real property comprising any school that persons under the age of 18 attend ... [unless] the property is owned by the offender and was purchased before July 7, 2000.”

ANSWER: Defendants admit the allegations of Paragraph 34.

35. There are 4,979 primary and high schools in Illinois. See, Illinois State Board of Education 2015-16 Enrollment Data: http://www.isbe.state.il.us/research/htmls/fall_housing.htm (last visited December 14, 2016).

ANSWER: Defendants admit the allegations of Paragraph 35.

36. 720 ILCS 5/11-9.3 (b-10) makes it unlawful “to knowingly reside within 500 feet of a playground, child care institution, day care center, part day child care facility, day care home, group day care home, or a facility providing programs or services exclusively directed toward persons under 18 years of age” unless the property is owned by the offender and was purchased before the effective date of the prohibition.

ANSWER: Defendants admit the allegations of Paragraph 36.

37. There are 9,929 licensed daycare providers in Illinois. See, Illinois Department of Children and Family Services Provider Index, available at:

<https://sunshine.dcf.illinois.gov/Content/Licensing/Daycare/Search.aspx> (last visited December 14, 2016).

ANSWER: Defendants deny the allegations of Paragraph 37. As of October 11, 2017, the Illinois Department of Children and Family Services Provider Index, available at:

https://sunshine.dcf.illinois.gov/Content/Licensing/Daycare/Search.aspx, lists 9,413 licensed daycare providers in Illinois.

38. In the City of Chicago alone, there are 332 Chicago Park District owned playgrounds. See, <https://data.cityofchicago.org/Parks-Recreation/Parks-Containing-Playgrounds/n8h8-zjr3> (last visited December 14, 2016).

ANSWER: Defendants admit the allegations of Paragraph 38.

39. Pursuant to 720 ILCS 5/11-9.3(e), the 500-foot distance is measured from the outer property line of the prohibited location to the outer property line of the potential residence.

ANSWER: Defendants admit the allegations of Paragraph 39.

Statutory Restrictions on Where Sex Offenders Can Reside While on MSR

40. In addition to complying with the housing restrictions imposed by statute on all individuals classified as child sex offenders, prisoners who seek release from the IDOC on MSR must also comply with additional restrictions imposed under Illinois law on where individuals on MSR may reside.

ANSWER: Defendants admit the allegations of Paragraph 40.

41. One of the restrictions is 730 ILCS 5/3-3-7(a)(7.6), which makes it unlawful for any individual convicted of a sex offense to reside while on MSR “at the same address or in the same condominium unit or apartment unit or in the same condominium complex or apartment complex with another person he or she knows or reasonably should know is a convicted sex offender or has been placed on supervision for a sex offense,” unless such housing is an IDOC approved half-way house or medical facility.

ANSWER: Defendants admit the allegations of Paragraph 41, except that a sex offender on MSR may also reside at any facility operated or licensed by the Illinois Department of Children and Family Services or by the Illinois Department of Human Services.

42. This statute is routinely applied to prohibit individuals seeking release on MSR from residing in the same trailer park or multi-building apartment complex as another individual with a past conviction for a sex-related offense.

ANSWER: Defendants admit that this statute has been interpreted by the IDOC to prohibit individuals seeking release on MSR from residing in the same trailer park as another individual with a past conviction for a sex-related offense when the individual seeking release on MSR is renting the trailer lot from the owner of the trailer park. However, Defendant denies that this statute prohibits those individuals from residing in the same trailer park as

another individual with a past conviction for a sex-related offense when the individual seeking release on MSR is living on a trailer park lot that is individually owned, either by that individual or by a family member or friend. Defendants admit that this statute has been interpreted by the IDOC to prohibit individuals seeking release on MSR from residing in the same multi-building apartment complex as another individual with a past conviction for a sex-related offense where the buildings in the apartment complex are all on the same parcel of land, unbroken by a street, but denies that this statute prohibits seeking release on MSR from residing in the same multi-building apartment complex as another individual with a past conviction for a sex-related offense where the two buildings are separated by a street.

43. There are no halfway houses in the State of Illinois that accept parolees classified as sex offenders.

ANSWER: Defendants deny the allegations of Paragraph 43.

44. Another statutory restriction is 730 ILCS 5/3-3-7(b-1)(12), which prohibits anyone deemed a sex offender from “resid[ing] near ... parks, schools, day care centers, swimming pools, beaches, theaters, or any other places where minor children congregate” without prior approval of the Illinois Department of Corrections while on MSR.

ANSWER: Defendants admit that 730 ILCS 5/3-3-7(b-1)(12) is a condition that the PRB may impose on sex offenders, but deny that 730 ILCS 5/3-3-7(b-1)(12) automatically applies to all sex offenders on MSR. Defendants further admit that, if imposed by the PRB on a particular offender, 730 ILCS 5/3-3-7(b-1)(12) prohibits the offender from “resid[ing] near ... parks, schools, day care centers, swimming pools, beaches, theaters, or any other places where minor children congregate” without prior approval of the IDOC.

45. In the City of Chicago alone, there are 581 parks. See, <https://data.cityofchicago.org/Parks-Recreation/Parks-Locations/wwy2-k7b3> (last visited December 14, 2016).

ANSWER: Defendants admit the allegations of Paragraph 45.

46. The statute does not define what is meant by “near.”

ANSWER: Defendants admit the allegations of Paragraph 46.

47. The statute does not define what is meant by “any other places where minor children congregate.”²

ANSWER: Defendants admit the allegations of Paragraph 47.

48. The determination of whether a proposed “host site” complies with these prohibitions is completely within the IDOC’s discretion.

ANSWER: Defendants admit the allegations of Paragraph 48.

49. Illinois Department of Corrections officials routinely cite the prohibition on living “near” the locations enumerated in 730 ILCS 5/3-3-7(b-1)(12) to deny proposed housing locations.

ANSWER: Defendants admit that the PRB often applies the condition stated in 730 ILCS 5/3-3-7(b-1)(12) to sex offenders with MSRs of three years to life, and further admits that the IDOC works to ensure that the host site submitted by the offender meets the conditions set by the PRB.

² The Fourth Circuit recently found unconstitutional a North Carolina statute containing a very similar restriction in *Does v. Cooper*, 16-6026 (4th Cir., Nov. 30, 2016). The statute at issue there prohibited people classified as sex offenders from “knowingly being ... at any place where minors gather for regularly scheduled educational, recreational, or social programs.” *Id.* at 5, citing N.C. Gen. Stat. Art. 7, §14-208.18(a)(3). The Court found the statute unconstitutionally vague because “neither an ordinary citizen nor a law enforcement officer could reasonably determine what activity was criminalized.” *Id.* at 2122.

50. Illinois law also gives the Illinois Department of Corrections discretion to impose “any other appropriate restrictions concerning the offender’s use of or access to a computer or any other device with Internet capability imposed by the Board, the Department or the offender’s supervising agent.” 730 ILCS 5/3-3-7 (a)(7.11)(iv).

ANSWER: Defendants admit that 730 ILCS 5/3-3-7 (a)(7.11) allows the PRB, the IDOC, or the offender’s supervising agent to impose appropriate restrictions on the offender’s use of computers with Internet capability.

51. Pursuant to this authority, the IDOC routinely prohibits individuals deemed sex offenders from serving their MSR at any “host site” where any resident has a computer or smart phone with Internet capability.

ANSWER: Defendants admit that the PRB often imposes internet access restrictions on sex offenders with MSRs of three years to life, and further admits that the IDOC works to ensure that the host site submitted by the offender meets the conditions set by the PRB by ensuring that the offender does not have unfiltered access to the Internet through another resident’s computer or smart phone.

52. Illinois law also gives the Illinois Department of Corrections broad discretion to approve or deny housing for individuals seeking release on MSR for any reason they see fit. See, 730 ILCS 5/3-3-7 (b-1)(1) (setting forth that anyone deemed a sex offender who seeks release on MSR may “reside only at a Department approved location.”)

ANSWER: Defendants admit that the IDOC has discretion to approve or deny housing for individuals seeking release on MSR, but deny that the IDOC may deny housing “for any reason they see fit.”

53. This discretion is routinely exercised to deny approval for sex offenders' proposed "host sites," even when those sites comply with all written restrictions (such as restrictions on living near parks, schools, day cares, etc.) enumerated under Illinois law.

ANSWER: Defendants deny the allegations of Paragraph 53.

The Unavailability of Host Sites for Indigent Prisoners

54. The State of Illinois provides no housing resources for sex offenders who are approved for release from IDOC on MSR.

ANSWER: Defendants admit the allegations of Paragraph 54.

55. There is no transitional housing (or "halfway houses") in Illinois that accept individuals with sex-related convictions.

ANSWER: Defendants deny the allegations of Paragraph 55.

56. There are no homeless shelters in Illinois that accept sex offenders.

ANSWER: Defendants admit the allegations of Paragraph 56.

57. Unless a parolee has money to pay for his own housing or people outside of prison who are willing to pay for his housing or take him in, he cannot be released from an IDOC facility to a "host site" on MSR.

ANSWER: Defendants admit that an offender cannot be released on MSR without a suitable host site.

58. The IDOC will not approve a homeless individual's release on MSR due to the lack of an approved "host site."

ANSWER: Defendants admit the allegations of Paragraph 58.

The Consequences of the Unavailability of Housing for Sex Offenders who are Sentenced to Indeterminate MSR Terms of “Three Years to Life”

59. The severe restrictions on where people classified as sex offenders can live while on MSR under Illinois law, in combination with the lack of halfway houses that accept people classified as sex offenders, make it impossible for the vast majority of individuals convicted of sex-related offenses find an approved “host site.” Accordingly, they must serve their MSR time in prison.

ANSWER: Defendants deny the allegations of Paragraph 59.

60. A prisoner sentenced to a fixed MSR period (for example, an MSR term of three years), who cannot find an approved host site and is imprisoned after being approved for MSR will receive credit towards having served his MSR period while in prison. Eventually, such an individual will “max out” his MSR time—i.e., serve the full length of his MSR in an IDOC facility—and then be released from IDOC custody with no supervision.

ANSWER: Defendants admit the allegations of Paragraph 60.

61. The consequences, however, are entirely different for prisoners with indeterminate MSR sentences of “three years to life.” Prisoners with indeterminate MSR sentences who cannot find approved host sites can never max out their MSR time because, as set forth in ¶ 23 above, they cannot meet the statutory conditions for seeking termination of their MSR while imprisoned in an IDOC facility.

ANSWER: Defendants admit the allegations of Paragraph 61.

62. Accordingly, the sentences of these prisoners are effectively converted to life imprisonment, even though such a sentence was never imposed, nor contemplated, the sentencing court.

ANSWER: Defendants deny the allegations of Paragraph 59.

Facts Pertinent to the Named Plaintiffs

Paul F. Murphy

63. Plaintiff Paul F. Murphy, 61, is a prisoner at Taylorville Correctional Center in Taylorville, Illinois, and a registered sex offender. He was convicted in 2011 of aggravated child pornography, for which he was sentenced to 36 months probation.

ANSWER: Defendants admit that Murphy is 62 and is in IDOC custody at Taylorsville Correctional Center, and further admit that Murphy is a registered sex offender based on his 2011 conviction for aggravated child pornography. Defendants deny that Murphy was initially sentenced to 36 months probation; Murphy was originally sentenced to two years of probation and 180 days in the DuPage County Jail.

64. In August 2013, Murphy's probation was revoked because, while homeless and reporting his addresses on a weekly basis pursuant to state statute, he was arrested for sleeping in the doorway of a church.

ANSWER: Defendants admit that Murphy's probation was revoked in part because he was residing in the doorway of a building that was located within 150 feet of a park, in violation of the terms of his probation, but deny that this was the only reason that his probation was revoked. Murphy's probation was also revoked because he was unsatisfactorily discharged from specialized sex offender treatment, he failed to appear for a scheduled field visit, and he provided false information to his probation officer regarding his employment status.

65. Murphy was sentenced to three years in prison at 50 percent, plus two years of MSR. In February 2014, his MSR sentence was amended to three years to life.

ANSWER: Defendants admit the allegations of Paragraph 65.

66. The PRB approved Murphy for release on MSR on March 3, 2014.

ANSWER: Defendants admit the allegations of Paragraph 66.

67. To date, the IDOC has not released Murphy from prison because he cannot find an approved “host site” at which to serve his MSR.

ANSWER: Defendants admit the allegations of Paragraph 67.

68. Murphy has no money to pay for housing and cannot earn any money because he is in prison.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 68.

69. Murphy has no living family members or friends outside of prison who could help him pay for housing.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 69.

70. Murphy’s only true option for housing outside of IDOC is a halfway house or homeless shelter.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 70.

71. Murphy applied for housing at a halfway house in East St. Louis, Illinois. At the time he applied, it was the only halfway house in the state that accepted sex offenders. When he applied, he was told that there was a five-year waiting list for a room at this halfway house.

ANSWER: Defendants admit that there was a halfway house in East St. Louis, Illinois, that accepted sex offenders, but deny that this was the only halfway house in the state that accepted sex offenders. Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 71.

72. The halfway house in East St. Louis subsequently closed.

ANSWER: Defendants admit the allegations of Paragraph 72.

73. Now, there are no halfway houses or homeless shelters in Illinois that will accept sex offenders.

ANSWER: Defendants deny the allegations of Paragraph 73.

74. The state of Illinois provides no financial resources for sex offenders who cannot afford their own housing while on MSR.

ANSWER: Defendants admit the allegations of Paragraph 74.

75. IDOC will not release a homeless individual on MSR.

ANSWER: Defendants admit that, if the PRB has imposed electronic monitoring on an individual as a condition of release, then the IDOC will not release an individual on MSR without an approved host site. However, if the PRB has not imposed electronic monitoring on an individual as a condition of release, then the IDOC will release an offender to a homeless shelter.

76. Because his MSR term is indefinite, Murphy faces imprisonment in the Illinois Department of Corrections for the rest of his life. Murphy will never be able to meet the statutory requirements discussed above for an approved “host site,” which is required for release on MSR. Moreover, he can never apply for termination of his MSR period while in prison pursuant to the terms of 730 ILCS 5/3-14-2.5(d), discussed in ¶23 above.

ANSWER: Defendants admit that Murphy cannot apply for termination of his MSR period while in IDOC custody. Defendants deny the remaining allegations of Paragraph 76.

Stanley Meyer

77. Plaintiff Stanley Meyer, 41, is an inmate at Taylorville Correctional Center in Taylorville, Illinois, and a registered sex offender. He was convicted in 2008 of criminal sex assault and sentenced to 48 months in jail at 85 percent and an MSR sentence of three years to life.

ANSWER: Defendants admit that Meyer is 42 years old, and further admit that Meyer is a registered sex offender based on his 2008 conviction for criminal sexual assault where the victim was unable to consent. Defendants admit the remaining allegations of Paragraph 77.

78. Plaintiff Meyer has completed his prison sentence. The PRB approved Meyer for release on MSR on May 12, 2011.

ANSWER: Defendants admit the allegations of Paragraph 78.

79. To date, the IDOC has not released Meyer from prison because he cannot find an approved “host site” at which to serve his MSR.

ANSWER: Defendants admit that the IDOC has not released Meyer from prison because he has not submitted an acceptable host site at which to serve his MSR. Defendants lack knowledge or information sufficient to form a belief as to whether Meyer is unable to find a suitable host site.

80. Meyer has no money to pay for housing and cannot earn money to pay for housing because he is in prison.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 80.

81. Meyer has no family members or friends outside of prison who can help him pay for housing.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 81.

82. Because his MSR term is indefinite, Meyer faces imprisonment in the Illinois Department of Corrections for the rest of his life. Meyer will never be able to meet the statutory requirements discussed above for an approved “host site,” which is required for release on MSR. Moreover, he can never apply for termination of his MSR period while in prison pursuant to the terms of 730 ILCS 5/3-14-2.5(d), discussed in ¶23 above.

ANSWER: Defendants admit that Meyer cannot apply for termination of his MSR period while in IDOC custody. Defendants deny the remaining allegations of Paragraph 82.

J.D. Lindenmeier

83. Plaintiff J.D. Lindenmeier, 34, is an inmate at Taylorville Correctional Center in Taylorville, Illinois, and a registered sex offender. He was convicted in 2007 of predatory criminal sexual assault and sentenced to six years in jail at 85 percent, plus an MSR sentence of three years to life.

ANSWER: Defendants admit the allegations of Paragraph 83.

84. Lindenmeier has completed his prison sentence. The PRB approved Lindenmeier for release on MSR on July 18, 2011.

ANSWER: Defendants admit the allegations of Paragraph 84.

85. Lindenmeier has a supportive family and friends outside of prison who have offered to help him successfully serve his MSR. While his family members cannot afford to pay for Lindenmeier’s housing, they are willing to take him into their own homes.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 85.

86. With the help of these friends and family members, Lindenmeier has made numerous efforts to find compliant housing to satisfy the requirements for his release from prison on MSR, but IDOC officials have rejected all of his proposed host sites.

ANSWER: Defendants admit that Lindenmeier has submitted several proposed host sites that were unacceptable for various reasons, and further admit that the IDOC has not released Lindenmeier from prison because he has not submitted an acceptable host site at which to serve his MSR. Defendants lack knowledge or information sufficient to form a belief as to whether Lindenmeier is unable to find a suitable host site or the alleged efforts of Lindenmeier's friends and family members to secure housing for him.

87. Lindenmeier has proposed the following locations, each of which was rejected:

- His father's home; denied because house is located within 500 feet of prohibited location (*e.g.*, school or daycare);
- His mother's home; denied because residence contains a computer and smart phone;
- His girlfriend's home; denied because house is located within 500 feet of prohibited location (*e.g.*, daycare);
- His sister's home; denied because his sister has children and a smartphone;
- His father's girlfriend's home; denied because house is located within 500 feet of prohibited location (*e.g.*, daycare); and
- His mother's boyfriend's home; denied because house contains a computer and is located within 500 feet of prohibited location (*e.g.*, school).

ANSWER: Defendants admit that Lindenmeier has submitted six proposed host sites, each of which was unacceptable. Three of the host sites were unacceptable because they were within 500 feet of a licensed day care center; two of the host sites were unacceptable because they were within 500 feet of a park with a playground area; and one of the host sites was unacceptable because the host had weapons, a computer, and internet access. For each of

these sites, there may have been additional reasons that the host site was not acceptable. Defendants lack knowledge or information sufficient to form a belief as to Lindenmeier's relationship with the hosts at these various proposed host sites. Defendants deny the remaining allegations of Paragraph 87.

88. Lindenmeier has no other options for obtaining housing outside of prison.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 88.

89. Because his MSR term is indefinite, Lindenmeier faces imprisonment in the Illinois Department of Corrections for the rest of his life. Lindenmeier cannot meet the statutory requirements discussed above for an approved "host site," which is necessary for release on MSR. Moreover, he can never apply for termination of his MSR period while in prison pursuant to the terms of 730 ILCS 5/3-14-2.5(d), discussed in ¶23 above.

ANSWER: Defendants admit that Lindenmeier cannot apply for termination of his MSR period while in IDOC custody. Defendants deny the remaining allegations of Paragraph 89.

Keenon Smith

90. Plaintiff Keenon Smith, 19, is an inmate at Pinckneyville Correctional Center in Pinckneyville, Illinois, and is a registered sex offender. He was convicted in 2012 of criminal sexual assault, for which he was sentenced to five years in prison, plus an MSR term of three years to life.

ANSWER: Defendants admit that Smith is 20 years old and was formerly in IDOC custody at Pinckneyville Correctional Center, but deny that Smith is still in IDOC custody; Smith submitted an acceptable host site and was released on MSR on January 24, 2017. Defendants admit the remaining allegations of Paragraph 90.

91. Smith has completed his prison sentence. The PRB approved Smith for release on MSR on November 4, 2016.

ANSWER: Defendants admit the allegations of Paragraph 91.

92. To date, the IDOC has not released Smith from prison because he cannot find an approved “host site” at which to serve his MSR.

ANSWER: Defendants deny the allegations of Paragraph 92; Smith was released from IDOC custody on January 24, 2017.

93. While Smith does not personally have any resources to pay for housing, Smith’s mother, who is an elementary school teacher, is willing to take Smith into her home or pay for his housing elsewhere at an approved “host site.”

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 93.

94. Smith’s mother has proposed at least 12 different host sites in Chicago and the suburbs, but IDOC has rejected all of the proposed sites, including the following:

- Smith’s mother’s home in Calumet City, Illinois; denied because house is “a three minute drive” from the victim’s residence;
- Four different apartments in Calumet City; denied because too close to various unidentified prohibited locations (including daycares and schools);
- An apartment in South Holland, Illinois; denied because too close to a daycare;
- Cornerstone Halfway House in Chicago, Illinois; denied because it will not accept an individual with a sex-related conviction;
- Four different apartments in Chicago, Illinois; denied because too close to various unidentified prohibited locations (including daycares and parks);

ANSWER: Defendants admit that Smith submitted twelve proposed host sites that were unacceptable for various reasons. The first host site was unacceptable because it was less

than a mile away from the victim's home, which might cause Smith to violate the order entered by the PRB that he have no contact with his victim. Of the other eleven sites that were not acceptable, eight were too close to day care centers and/or schools (and may also have been close to a park); two were too close to parks with playgrounds; and one was not a valid address. Defendants deny that the IDOC rejected all the host sites proposed by Smith. On December 30, 2016, the IDOC found that three host sites submitted by Smith were acceptable; one of these three sites was approved once the lease was signed and a landline telephone was installed to support electronic monitoring. Smith was accordingly released on January 24, 2017. Defendants deny the remaining allegations of Paragraph 94.

95. IDOC officials rejected Smith's mother's home as a "host site" on the basis that it was "a three minute drive" to the victim of Smith's offense.

ANSWER: Defendants admit that Smith's mother's home was not acceptable as a host site because it was less than a mile away from the victim's home, which might cause Smith to violate the order entered by the PRB that he have no contact with his victim.

96. There is no statutory prohibition on an offender's living a certain driving distance from a victim.

ANSWER: Defendants admit that there is no statute prohibiting all offenders from living within a certain driving distance from a victim. However, 730 ILCS 5/3-3-7(b-1)(8) allows the PRB to impose a condition of release specifying that the offender will refrain from having any contact with the victim or victim's family, and the PRB imposed that condition on Smith.

97. In fact, the victim's residence is over 5,000 feet from Smith's mother's residence.

ANSWER: Defendants admit the allegations of Paragraph 97.

98. Illinois law prohibits certain offenders from living within “500 feet” of their victims. 720 ILCS 5/11-9.3 (b).

ANSWER: Defendants admit that 720 ILCS 5/11-9.3 (b-15) (not 720 ILCS 5/11-9.3 (b)) prohibits child sex offenders from living within 500 feet of their victims.

99. IDOC officials would not give Smith’s mother an explanation as to why her residence was deemed too close to the victim or what an acceptable distance from the victim would be.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 99.

100. For several other of the addresses Smith’s mother proposed, IDOC officials told her they were too close to a park. Illinois law, however, does not set forth a specific distance an individual on MSR must live from a park (as opposed to a playground). IDOC officials have not told Smith’s mother what an acceptable distance from a park is.

ANSWER: Defendants admit that Illinois law does not set for a specific distance that an individual on MSR must live from a park, but state that 720 ILCS 5/11-9.3(b-10) prohibits child sex offenders from living within 500 feet of a playground. Smith submitted two host sites that were unacceptable because they were within 500 feet of parks with playgrounds (Sherman Park and Ada Park). Moreover, Defendants admit that 730 ILCS 5/3-3-7(b-1)(12), if imposed by the PRB, prohibits the offender from “resid[ing] near ... parks, schools, day care centers, swimming pools, beaches, theaters, or any other places where minor children congregate” without prior approval of the IDOC. Defendants lack knowledge or information sufficient to form a belief as to what Smith’s mother was told regarding what an acceptable distance from a park is.

101. Due to the extensive restrictions imposed on where sex offenders can live under state law and the arbitrary way in which IDOC officials apply the restrictions concerning where parolees can live, Smith cannot locate an approved “host site,” which is required for release on MSR. Moreover, he can never apply for termination of his MSR period while in prison pursuant to the terms of 730 ILCS 5/3-14-2.5(d), discussed in ¶ 23 above.

ANSWER: Defendants deny the allegations of Paragraph 101. Smith submitted an acceptable host site and was released on January 24, 2017.

102. Because his MSR term is indefinite, Smith faces imprisonment in the Illinois Department of Corrections for the rest of his life.

ANSWER: Defendants deny the allegations of Paragraph 102.

Jasen Gustafsen

103. Plaintiff Jasen Gustafsen, 32, is an inmate at Lincoln Correctional Center in Lincoln, Illinois, and a registered sex offender. He was convicted in 2013 of aggravated child pornography, for which he was sentenced to four years in prison at 50 percent, plus a term of mandatory supervised release of three years to life.

ANSWER: Defendants admit the allegations of Paragraph 103.

104. Gustafson earned three months good time, thereby converting his two- year sentence into a sentence of one year and nine months. He has now completed his prison sentence. The PRB approved Gustafson for release on MSR on October 19, 2014.

ANSWER: Defendants admit the allegations of Paragraph 104.

105. Gustafson has no resources to pay for his own housing outside of prison. He does, however, have two supportive family members (his mother and his aunt) who are willing to take

him in. While neither his mother nor his aunt can afford to pay for Gustafson's housing elsewhere, they are both willing to house him in their own homes while he serves his MSR.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 105.

106. IDOC officials have rejected both proposed host sites.

ANSWER: Defendants admit that Gustafson has submitted two proposed host sites that were unacceptable for various reasons.

107. IDOC officials rejected Gustafson's mother's residence because it was too close to a prohibited location (*e.g.*, a daycare).

ANSWER: Defendants admit the allegations of Paragraph 107.

108. IDOC officials rejected his aunt's residence as a host site because she has grandchildren who regularly visit her.

ANSWER: Defendants admit the allegations of Paragraph 108.

109. Gustafson has no other options for seeking housing outside of prison.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 109.

110. Because his MSR is indeterminate, Gustafson faces imprisonment in the Illinois Department of Corrections for the rest of his life. Gustafson cannot meet the statutory requirements discussed above for an approved "host site," which is required for release on MSR. Moreover, he can never apply for termination of his MSR period while in prison pursuant to the terms of 730 ILCS 5/3-14-2.5(d), discussed in ¶23 above.

ANSWER: Defendants admit that Gustafson cannot apply for termination of his MSR period while in IDOC custody. Defendants deny the remaining allegations of Paragraph 110.

Alfred Aukema

111. Plaintiff Alfred Aukema, 43, is an inmate in Taylorville Correctional Center in Taylorville, Illinois, and is a registered sex offender. He was convicted in 2013 of criminal sexual assault, for which he received a five-year prison sentence at 85 percent, plus a term of mandatory supervised release of three years to life.

ANSWER: Defendants admit the allegations of Paragraph 111.

112. He is scheduled to complete his five-year sentence on September 7, 2017.

ANSWER: Defendants admit the allegations of Paragraph 112.

113. Plaintiff Aukema has no financial resources to afford to pay for a host site and no family or friends outside of prison who can help him pay for housing.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 113.

114. Because his MSR term is indefinite, Aukema faces imprisonment in the Illinois Department of Corrections for the rest of his life. Aukema will never be able to meet the statutory requirements discussed above for an approved “host site,” which is required for release on MSR. Moreover, he can never apply for termination of his MSR period while in prison pursuant to the terms of 730 ILCS 5/3-14-2.5(d), discussed in ¶23 above.

ANSWER: Defendants admit that Aukema cannot apply for termination of his MSR period while in IDOC custody. Defendants deny the remaining allegations of Paragraph 114.

Kevin Tucek

115. Plaintiff Kevin Tucek, 33, is an inmate at Taylorville Correctional Center in Taylorville, Illinois, and a registered sex offender. He was convicted in 2014 of criminal sexual

assault, for which he received an eight-year prison sentence, plus a term of mandatory supervised release of three years to life.

ANSWER: Defendants admit the allegations of Paragraph 115.

116. He is scheduled to complete his prison sentence on July 20, 2020.

ANSWER: Defendants admit the allegations of Paragraph 116.

117. Plaintiff Tucek has no financial resources to afford to pay for a host site and no family or friends outside of prison who can help him pay for housing.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 117.

118. Because his MSR term is indefinite, Tucek faces imprisonment in the Illinois Department of Corrections for the rest of his life. Tucek will never be able to meet the statutory requirements discussed above for an approved “host site,” which is required for release on MSR. Moreover, he can never apply for termination of his MSR period while in prison pursuant to the terms of 730 ILCS 5/3-14-2.5(d), discussed in ¶23 above.

ANSWER: Defendants admit that Tucek cannot apply for termination of his MSR period while in IDOC custody. Defendants deny the remaining allegations of Paragraph 118.

Class Allegations

119. Pursuant to Fed. R. Civ. P. 23(b)(2), the named Plaintiffs seek certification of this complaint as a class action. The named Plaintiffs seek to represent two classes consisting of the following:

- **Class One:** All individuals who have received an MSR sentence of three years to life currently detained in the Illinois Department of Corrections who have been approved for release on MSR by the PRB but have been denied release from IDOC custody because of their inability to find an approved host site; and

- **Class Two:** All individuals who have received an MSR sentence of three years to life currently or in the future detained in the Illinois Department of Corrections who will in the future remain detained indefinitely in prison due to the unavailability of host sites.

ANSWER: Defendants deny that this case is suitable for class action treatment pursuant to Fed. R. Civ. P. 23(b)(2). In particular, the proposed Class Two cannot be certified because the claims of the representatives for that class were dismissed as unripe (Dkt. 31 at 9-10), and the claims of the class members are similarly unripe.

120. The Plaintiff Classes seek a declaration that the statutory schemes described above are unconstitutional because they result in routine violations of class members' constitutional right to liberty in violation of the Eighth and Fourteenth Amendments.

ANSWER: Defendants admit that Plaintiffs purport to seek declaratory on behalf of a purported class. Defendants deny that Plaintiffs are entitled to any relief whatsoever, deny that a class should be certified in this matter, and deny all remaining allegations of Paragraph 120.

121. The proposed classes are numerous. Based on data available from the Illinois Sex Offender Registry, there are currently approximately 4,000 people imprisoned in the Illinois Department of Corrections who have been convicted of sex offenses for which state law imposes an indeterminate term of "three years to life" of MSR.

ANSWER: Defendants admit that the proposed classes are numerous, but deny that there are approximately 4,000 people in the proposed class. Based on IDOC records, as of October 3, 2017, there were 2,342 inmates in IDOC custody with an MSR of three years to life. Defendants deny that any class should be certified in this case.

122. Joinder of all class members is impracticable. Not only are the classes very numerous, they are also constantly changing. Class One is consistently growing because

individuals are completing their prison sentences and being approved by the PRB for release on MSR. Likewise, Class Two is consistently expanding because additional people are receiving “three to life” MSR terms on a routine basis.

ANSWER: Defendants admit that joinder of all members of the proposed class would be impracticable, but deny that any class should be certified in this case.

123. There are questions of law and fact common to all class members, including but not limited to the following:

- Does a statutory scheme that results in the extrajudicial imposition of life imprisonment violate the Eighth and Fourteenth Amendments;
- Does a statutory scheme that deprives individuals of their liberty solely because of their inability to afford housing violate the Equal Protection Clause;
- Are Illinois statutes regulating where individuals deemed sex offenders may reside while on MSR void for vagueness because they fail to define what is meant by many of their operative terms and thus fail to give sufficient guidance to IDOC officials and to prisoners seeking compliant housing

ANSWER: Defendants deny that the proposed class meets the commonality requirement because “common answers,” based on common evidence, will not resolve key issues in the case as required under *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2550-51 (2011). Moreover, the third proposed question is not common to the class because the Court dismissed Plaintiffs’ void for vagueness claim, *see* Dkt. 31 at 23-24.

124. All individuals falling within the class definitions have been subject to the same statutory scheme. Given the commonality of the questions pertinent to all class members, a single declaratory judgment would provide relief to each member of the class.

ANSWER: Defendants deny the allegations of Paragraph 124.

125. Defendants have acted and continue to act in a manner adverse to the rights of the proposed classes, making final declaratory relief appropriate with respect to the classes as a whole.

ANSWER: Defendants deny the allegations of Paragraph 125.

126. Plaintiffs and the classes they seek to represent have been directly injured by the statutory schemes and practices challenged herein; and members of the class are currently at risk of future harm from the continuation of these policies and practices.

ANSWER: Defendants deny the allegations of Paragraph 126.

127. Plaintiffs will fairly and adequately represent the interests of the class; and the Plaintiffs' claims are typical of the claims of all members of the proposed class.

ANSWER: Defendants deny the allegations of Paragraph 127.

128. Plaintiffs' counsel are experienced in civil rights litigation, including *Monell* claims, (b)(2) class actions, and constitutional matters on behalf of incarcerated people. Plaintiffs' counsel will fairly and adequately represent the interests of the class.

ANSWER: Defendants admit that Plaintiffs' counsel would fairly and adequately represent the interests of the proposed, but deny that any class should be certified in this case.

**COUNT I — FOURTEENTH AMENDMENT
SUBSTANTIVE DUE PROCESS
(Against Both Defendants)**

129. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

ANSWER: Defendants incorporate by reference their answers to the paragraphs above.

130. Under the scheme described above, a prisoner approved for MSR will only be released from prison to an approved "host site" (*e.g.*, housing that complies with all of the restrictions imposed by statute, the IDOC and the PRB).

ANSWER: Defendants admit the allegations of Paragraph 130.

131. The multiple layers of prohibitions imposed on where individuals can live creates an unmeetable condition (*e.g.*, the restrictions are so onerous that for the vast majority of people approved for MSR they are effectively impossible to meet), forcing those subject to the requirements to spend the duration of their MSR term incarcerated.

ANSWER: Defendants deny the allegations of Paragraph 131.

132. For those prisoners with an MSR sentence of “three years to life,” those unmeetable conditions result in life imprisonment because they can never meet the conditions for release from prison on MSR, nor can they meet the conditions for termination of their MSR.

ANSWER: Defendants deny the allegations of Paragraph 132.

133. The three-years-to-life sentence, combined with the onerous housing restrictions results in a prison sentence that exceeds the sentence imposed by the sentencing court in such an unexpected manner as to impose a shocking interference on class members’ liberty interests.

ANSWER: Defendants deny the allegations of Paragraph 133.

134. The punishment shocks the conscience because it is far out of proportion to the offense.

ANSWER: Defendants deny the allegations of Paragraph 134.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- a) Issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);
- b) Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);
- c) Enter judgment declaring that the housing restrictions described herein as applied to the class violate the Fourteenth Amendment of the U.S. Constitution;

- d) Enter a preliminary and then permanent injunction prohibiting Defendants from continuing enforcement of the unconstitutional policies and practices identified herein;
- e) Award Plaintiffs their reasonable attorneys' fees and cost pursuant to 42 U.S.C. § 1988, and other applicable law; and
- f) Grant such other relief as this Court deems just and proper.

ANSWER: Defendants deny that Plaintiffs are entitled to any relief whatsoever.

**COUNT II - FOURTEENTH AMENDMENT
EQUAL PROTECTION
(Against Both Defendants)**

135. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

ANSWER: Defendants incorporate by reference their answers to the paragraphs above.

136. Release from prison on MSR involves a liberty interest that cannot be denied simply on the basis of an individual's poverty.

ANSWER: Defendants deny the allegations of Paragraph 136.

137. The statutory and regulatory schemes at play here make it impossible for an indigent person sentenced to a "three to life" term of MSR to be released from prison.

ANSWER: Defendants deny the allegations of Paragraph 137.

138. An individual cannot be released from prison unless he has an approved "host site" that meets statutory, PRB and IDOC requirements.

ANSWER: Defendants admit the allegations of Paragraph 138.

139. An indigent prisoner without access to financial resources outside of prison cannot afford to pay for housing at a “host site.”

ANSWER: Defendants admit the allegations of Paragraph 139.

140. The state provides no financial resources, housing assistance or transitional housing (“halfway houses”) for individuals who have convictions for sex related crimes.

ANSWER: Defendants admit that the State of Illinois cannot directly provide transitional housing for sex offenders who cannot afford their own housing while on MSR, and while the IDOC has made substantial efforts to secure vendors to provide such housing, those efforts have been largely unsuccessful for various reasons. Defendants admit the remaining allegations of Paragraph 140.

141. Life imprisonment is not the only way to serve the government’s interests in knowing the whereabouts of indigent individuals approved for release on MSR. Rather, the state has alternative means of serving those interests—i.e., by subjecting those individuals to electronic monitoring with GPS. *See* 730 ILCS 5/3-37(a)(7.7) (requiring individuals convicted of crimes requiring the imposition of a “three to life” MSR term to “wear an approved electronic monitoring device ... that has Global Positioning System (GPS) capability for the duration of the person’s parole, mandatory supervised release term, or extended mandatory supervised release term.”).

ANSWER: Defendants deny that they have imposed “life imprisonment” on Plaintiffs, deny that they should consider or implement “alternative means” of “knowing the whereabouts of indigent individuals approved for release on MSR, and deny that these proposed “alternative means” are sufficient to serve the government’s interests in the absence of a fixed “host site” for the offender.

142. Accordingly, the statutory and regulatory schemes at issue in this case result in a severe and permanent deprivation of liberty for indigent persons without a sufficiently rational connection between the legislative purpose and the means used to achieve that purpose.

ANSWER: Defendants deny the allegations of Paragraph 142.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- a) Issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);
- b) Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);
- c) Enter judgment declaring that the housing restrictions described herein as applied to the class violate the Equal Protection Clause;
- d) Enter a preliminary and then permanent injunction prohibiting Defendants from continuing enforcement of the unconstitutional policies and practices identified herein;
- e) Award Plaintiffs their reasonable attorneys' fees and cost pursuant to 42 U.S.C. § 1988, and other applicable law; and
- f) Grant such other relief as this Court deems just and proper.

ANSWER: Defendants deny that Plaintiffs are entitled to any relief whatsoever.

**COUNT III — FOURTEENTH AMENDMENT
PROCEDURAL DUE PROCESS — VOID FOR VAGUENESS
(Against Defendant Madigan)**

143. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

ANSWER: Defendants incorporate by reference their answers to the paragraphs above.

144. The Due Process Clause of the Fourteenth Amendment prohibits states from enforcing laws that are unconstitutionally vague. As a matter of due process, statutory requirements must be written with sufficient clarity that persons of ordinary intelligence need not guess at their meaning.

ANSWER: Because the Court has dismissed Count III (see Dkt. 31 at 23-24), no answer to this Paragraph is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 144.

145. Several of the statutory regulations on where individuals sentenced to “three to life” MSR terms may live are invalid under the vagueness doctrine.

ANSWER: Because the Court has dismissed Count III (see Dkt. 31 at 23-24), no answer to this Paragraph is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 145.

146. Specifically, the prohibition on living “near” parks, schools, day care centers, swimming pools, beaches, theaters, “or any other places where minor children congregate,” as set forth in 730 ILCS 5/3-3-7(b-1)(12), is unconstitutionally vague because it does not define what is meant by “near” and does not define what is meant by “places where minor children congregate.”

ANSWER: Because the Court has dismissed Count III (see Dkt. 31 at 23-24), no answer to this Paragraph is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 146.

147. Those provisions fail to provide a person of ordinary intelligence fair notice of what is required to comply with the statute, making it likely that IDOC officials, who have unreviewable discretion to interpret those terms, will enforce the statutes in different ways against different people.

ANSWER: Because the Court has dismissed Count III (see Dkt. 31 at 23-24), no answer to this Paragraph is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 147.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- a) Issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);
- b) Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);
- c) Enter judgment declaring that 730 ILCS 5/3-3-7(b-1)(12) is void for vagueness;
- d) Enter a preliminary and then permanent injunction prohibiting Defendants from continuing enforcement of 730 ILCS 5/3-3-7(b-1)(12);
- e) Award Plaintiffs their reasonable attorneys' fees and cost pursuant to 42 U.S.C. § 1988, and other applicable law; and
- f) Grant such other relief as this Court deems just and proper.

ANSWER: Because the Court has dismissed Count III (see Dkt. 31 at 23-24), no answer is required. To the extent an answer is required, Defendants deny that Plaintiffs are entitled to any relief whatsoever.

**COUNT III - FOURTEENTH AMENDMENT
PROCEDURAL DUE PROCESS
(Against Defendant Baldwin)**

148. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

ANSWER: Defendants incorporate by reference their answers to the paragraphs above.

149. Illinois law gives the Illinois Department of Corrections very broad discretion to deny approval of a “host site” for any reason it sees fit.

ANSWER: Defendants admit that the IDOC has discretion to approve or deny housing for individuals seeking release on MSR, but deny that the IDOC may deny housing “for any reason it sees fit.”

150. Specifically, 730 ILCS 5/3-3-7 (b-1) sets forth that anyone deemed a sex offender who seeks release on MSR may “reside only at a Department approved location” and must comply with all other special conditions that the Department may impose that restrict the person from high-risk situations and limit access to potential victims.”

ANSWER: Defendants admit that 730 ILCS 5/3-3-7 (b-1) sets forth the two quoted conditions as optional conditions that the PRB may impose on sex offenders as terms of their MSR.

151. The IDOC routinely misuses the discretion it has been granted under this statute to deny approval of proposed “host sites” for reasons not enumerated in any statute.

ANSWER: Defendants deny the allegations of Paragraph 151.

152. Moreover, under 730 ILCS 5/3-3-7 (a)(7.11)(iv) the IDOC can impose “any other appropriate restrictions concerning the offender’s use of or access to a computer or any other device with Internet capability imposed by the Board, the Department or the offender’s supervising agent.”

ANSWER: Defendants admit that 730 ILCS 5/3-3-7 (a)(7.11) includes limitations on internet access as a mandatory condition of MSR for certain child sex offenders.

153. The IDOC routinely misuses the authority granted under this statute to prohibit individuals deemed sex offenders from serving their MSR at any host site where any resident

owns a computer or smart phone with Internet capability, although such a blanket prohibition is not set forth in any statute and is not reasonably related to any rehabilitative or other legitimate interest.

ANSWER: Defendants deny the allegations of Paragraph 153.

154. The IDOC's decision to deny approval of a "host site" is not appealable and is not reviewed by any other entity.

ANSWER: Defendants admit the allegations of Paragraph 154.

155. A statutory scheme that grants the IDOC excessive and unreviewable discretion to deny approval of housing and thereby keep individuals who have been granted MSR in prison violates due process.

ANSWER: Defendants deny the allegations of Paragraph 155.

156. Likewise, the IDOC's misuse of their discretion to deny approval of housing without adequate justification violates due process.

ANSWER: Defendants deny the allegations of Paragraph 156.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- a) Issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);
- b) Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);
- c) Enter judgment declaring that the terms of 730 ILCS 5/3-3-7 (b-1) and 730 ILCS 5/3-3-7 (a)(7.11)(iv) violate the Fourteenth Amendment because they vest excessive discretion with IDOC officials;
- d) Enter judgment declaring that the IDOC's policy and practice of imposing a blanket prohibition on allowing individuals deemed sex offenders to live at host

sites where any resident owns a computer or smart phone violates the Fourteenth Amendment;

- e) Enter a preliminary and then permanent injunction prohibiting Defendants from continuing enforcement of 730 ILCS 5/3-3-7(b-1)(12);
- f) Award Plaintiffs their reasonable attorneys' fees and cost pursuant to 42 U.S.C. § 1988, and other applicable law; and
- g) Grant such other relief as this Court deems just and proper.

ANSWER: Defendants deny that Plaintiffs are entitled to any relief whatsoever.

**COUNT IV — EIGHTH AMENDMENT
(Against Both Defendants)**

157. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

ANSWER: Defendants incorporate by reference their answers to the paragraphs above.

158. A criminal sentence must be proportionate to the crime for which the defendant has been convicted.

ANSWER: Defendants admit the allegations of Paragraph 158.

159. Imposition of an effective life sentence on prisoners entitled to release on MSR simply because they cannot find housing that complies with the restrictions on where they are allowed to live is grossly disproportionate and without reasonable justification.

ANSWER: Defendants deny that Plaintiffs have been given “an effective life sentence,” deny that requiring prisoners to submit an acceptable host site before they are released on MSR violates the Eighth Amendment, and deny all remaining allegations of Paragraph 159.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- a) Issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);
- b) Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);
- c) Enter judgment declaring that the statutory schemes described herein as applied to the class violate the Eighth Amendment of the U.S. Constitution;
- d) Enter a preliminary and then permanent injunction prohibiting Defendants from
- e) continuing the unconstitutional policies and practices identified herein;
- f) Award Plaintiffs their reasonable attorneys' fees and cost pursuant to 42 U.S.C. § 1988, and other applicable law; and
- g) Grant such other relief as this Court deems just and proper.

ANSWER: Defendants deny that Plaintiffs are entitled to any relief whatsoever.

GENERAL DENIAL

Defendants deny each and every allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

First Affirmative Defense: Exhaustion of Administrative Remedies

Plaintiffs have not exhausted available administrative remedies as required by 42 U.S.C. 1997(e) and therefore, their complaint should be dismissed.

JURY DEMAND

Defendants demand a trial by jury on all issues herein triable.

WHEREFORE, the Defendants request this Honorable Court deny the relief requested in Plaintiff's Complaint, and order any further relief the Court deems reasonable and just.

Respectfully submitted,

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