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Sept. 9, 2026

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Michigan Supreme Court unanimously rules Michigan cannot punish people under a law that did not exist at the time of the offense

LANSING, MI – The Michigan Supreme Court held today in *People v Eddie Lee Smith* that the 2021 Sex Offenders Registration Act (SORA) cannot be applied to people whose registrable offenses were committed before the 2011 SORA amendments took effect on July 1, 2011. Requiring those Michiganders to register under the 2021 law is unconstitutional ex post facto punishment under both the United States and Michigan constitutions.

The Court issued the order unanimously, with no dissent, and resolved the case without oral argument after ordering supplemental briefing this spring. Rulings of this consequence are rarely issued that way.

"Mr. Smith served his sentence and completed his parole," said Drew Walbeck, attorney for Mr. Smith. "The Michigan Supreme Court confirmed what both the federal and state constitutions have always guaranteed him: the government cannot impose a punishment that did not exist when the crime was committed. This decision is not about whether the registry is good policy or bad policy. It is about the limits we placed on government when we agreed to be governed."

Today's order rests on the Court's December 2025 decision in [People v Kardasz](#), which held that registration under the 2021 SORA is criminal punishment rather than a civil regulation. Summarizing its analysis, the *Kardasz* Court wrote that the 2021 SORA "approximates the traditional punishments of shaming and parole, burdens registrants with onerous requirements under the threat of imprisonment for noncompliance, and serves the penological goal of retribution."

"This order is right on the law," said State Appellate Defender Office (SADO) Deputy Director Jessica Zimbelman, who authored an amicus brief in the case on behalf of the Criminal Defense Attorneys of Michigan. "Michigan's Constitution does not let the state write a new punishment and then apply it backward to people who were sentenced years or decades earlier. The Court said that about the 2011 SORA law in *People v Betts*, and it has said it again today."

"Without *Kardasz*, we do not get this order today," Zimbelman said. "That decision is where the Court looked hard at what the registry actually does to people who are required to register and concluded it is punishment."

In reaching that conclusion in [Kardasz](#), the Court made a series of findings about how Michigan's registry operates and why it is punitive:

- Registration requirements "are still linked solely to the crime of conviction rather than to an individualized risk assessment, which aligns with the traditional penological goal of retribution."
- Registrants in the most restrictive tier must register for life, report in person four times a

year, and cannot petition for removal "on the basis of age, infirmity, low risk of recidivism, or sustained offense-free conduct."

- Michigan publishes information online on roughly 90% of registrants who are not incarcerated. Oregon and Minnesota, which use scientifically validated actuarial tools to assess risk, publish only the highest-risk registrants, publishing information on 6% and 14%, respectively.
- Citing peer-reviewed research, the Court found that "less-inclusive public registries may reduce sexual recidivism, while overinclusive registries may actually increase recidivism rates," and concluded that Michigan's registry website "is overinclusive and thus excessive and may be detrimental to the goal of public safety."
- The Michigan Department of Corrections has used the Static-99R, a validated risk-prediction instrument, for more than a decade. Research "suggests that individualized risk assessments are far more correlative with rates of recidivism than the offense-based tiers used in SORA."
- The registry "does not address the underlying causes of a [person's] conduct or support a [person's] reintegration as a noncriminal member of society," and lifetime registration "may work against the goal of rehabilitation."

Today's ruling does not change the law for anyone whose registrable offense was committed on or after July 1, 2011. Those individuals remain subject to SORA and all of its requirements. Everyone affected by today's order has already been on the registry for at least 15 years. When the Court reached a similar conclusion about the 2011 SORA in *Betts* in 2021, the Legislature had already enacted a replacement statute, the 2021 SORA, which had taken effect that March. No replacement statute is in place today.

"The tools the Court pointed to in *Kardasz* already exist, and our own Department of Corrections already uses them," Zimbelman said. "A registry built around who actually poses a risk would likely be both constitutional and potentially provide actual public safety benefits. We are ready to have conversations with the Legislature and all interested parties about how we can create a constitutional registry that protects all Michiganders."

Attorney Drew Walbeck represented Mr. Smith before the Michigan Supreme Court and filed the supplemental briefing that produced today's order.

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