

# Federal judge in Indiana holds mandatory “sex offender” classes unconstitutional

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By Fatima Hussein . . . A federal judge has ruled that Indiana’s mandated sex offender classes for prisoners who oppose them violates the constitutional right to be free from self-incrimination.

The Sept. 28 ruling in the class-action lawsuit filed in the Southern District of Indiana will affect all convicted, incarcerated sex offenders who opt out of the Indiana Sex Offender Monitoring and Management, or SOMM, program. Three of the plaintiffs will be eligible for release from prison.

The Indiana attorney general’s office has filed an emergency request to temporarily halt the case pending an appeal, saying the decision could put the public at risk by putting convicted sex offenders back on the streets.

A spokesman for Attorney General Curtis Hill confirmed that the office will file an appeal by the Oct. 30 deadline.

The ruling in the four-year-old case overrules an Indiana Supreme Court decision from 2014 that found the classes to be constitutional.

The dispute hinges on what the classes require.

In May 2013 Donald Lacy, Lawrence Greer-Bey, Frederick Holmes-Bey and Allan Kirkley filed a lawsuit against the state, then-governor Mike Pence, the Indiana Department of Correction and officials at the Plainfield and New Castle correctional facilities in Indiana.

The plaintiffs, all convicted of sex crimes, argued that since they pleaded not guilty to the crimes they were convicted of, they should not be forced to attend the SOMM program.

The program, instituted by the Indiana Department of Correction in 1999, forces participants to confess guilt in the crimes for which they are charged, give written consent to disclosure of confession and submit to a polygraph test.

Specifically, the program requires participants to disclose the details of the crimes for which they were convicted and confess to any past acts of sexual violence.

Jeff Cardella, a criminal law professor at [Indiana University's Robert H. McKinney School of Law](#), says the requirement to confess other crimes for which they were not adjudicated or convicted is a clear violation of the Fifth Amendment.

"The criminal defendant could potentially face additional charges as a result of that confession," he says. "They're being ordered to confess to crimes the state might otherwise not be aware of," he told IndyStar.

If prisoners do not participate in the program, they could

stay in prison longer than they otherwise might.

Punishment for not participating in the classes includes loss of good-time credit, loss of credit-earning class time and loss of "life, liberties and freedom for refusing to admit to an act they denied at trial," plaintiffs allege in the original complaint.

U.S. District Court Judge Richard Young ultimately sided with the prisoners.

"It is undeniable that prison authorities may, in the interest of rehabilitation, impose penalties for failing to participate in sex offender treatment programs," Young wrote in his opinion. "But the SOMM program at issue in this case provides significant penalties, in the form of lost earned food time credits and demotion in credit class, or choosing to remain silent."

He added that prisoners should be able to earn credit toward their sentences without incriminating themselves, "like any other convicted prisoner."

Representatives from New Castle and Plainfield correctional facilities declined to comment on the lawsuit.

An attorney for the Indiana attorney general's office filed a motion to stay, pending an appeal of the case.

"In the absence of a stay pending appeal, unquestionable and irrevocable harm to government actors, as well as the citizenry of Indiana will be sustained, the consequence of which greatly outweighs the harm to the limited persons affected by the Judgment," wrote Jonathan P. Nagy, deputy attorney general.

"If the Court's Judgment is not stayed pending appeal, various convicted sex offenders, including three of the class representatives, are eligible for immediate release."

The case is expected to be appealed to the 7th District Court of Appeals in Chicago.

**Source:** [IndySTAR](#)