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ADVANCE SHEET HEADNOTE
April 27, 2026

2026 CO 24

No. 24SC154, *Beagle v. People*—Sexually Violent Predator Designation—Cruel and Unusual Punishment.

The supreme court holds that the sexually violent predator ("SVP") designation, under section 18-3-414.5(1)(a), C.R.S. (2025), and its accompanying requirements do not constitute punishment under the Eighth Amendment to the United States Constitution. We first assess the SVP designation's statutory features under the framework in *Ellingburg v. United States*, 146 S. Ct. 564, 567–68 (2026), and determine that the General Assembly did not intend for the SVP designation to be punishment. From there, we apply the seven factors enumerated in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963), and determine that the SVP designation's punitive effects do not outweigh this nonpunitive intent by the "clearest proof." Accordingly, the supreme court affirms the judgment of the court of appeals.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 24

Supreme Court Case No. 24SC154
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 22CA594

Petitioner:

Timothy Paul Beagle,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed
en banc
April 27, 2026

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JUSTICE BOATRIGHT delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE SAMOUR**, **JUSTICE BERKENKOTTER**, and **JUSTICE BLANCO** joined.
CHIEF JUSTICE MÁRQUEZ, joined by **JUSTICE GABRIEL**, specially concurred.

JUSTICE BOATRIGHT delivered the Opinion of the Court.

¶1 At sentencing, the district court designated Timothy Paul Beagle as a sexually violent predator ("SVP"). On appeal, Beagle argued that his SVP designation constituted cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. A division of the court of appeals rejected this argument based on our precedent in *Allen v. People*, 2013 CO 44, ¶ 7, 307 P.3d 1102, 1105, which stated that an SVP designation "is not punishment." *People v. Beagle*, No. 22CA594, ¶ 24 (Jan. 4, 2024). We granted certiorari to consider (1) whether the SVP designation constitutes criminal punishment under the Eighth Amendment, and (2) if so, whether it is cruel and unusual as applied to Beagle.[1]

¶2 Because we determine that the General Assembly did not intend for the SVP designation to be punishment and the designation's punitive effects do not outweigh this nonpunitive intent by the "clearest proof," we hold that the SVP designation and its accompanying requirements do not constitute punishment

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[1] We granted certiorari to review the following issues:

1. Whether the sexually violent predator designation, under section 18-3-414.5(1)(a), C.R.S. (2024), is a criminal punishment under the Eighth Amendment to the United States Constitution.
2. Whether the sexually violent predator designation is cruel and unusual punishment as applied to Petitioner.

under the Eighth Amendment.[2] We thus affirm the judgment of the court of appeals.

I. Background

A. Facts and Procedural History

¶3 In July 2019, Beagle, who was forty-nine years old, picked up two sixteen-year-old girls who had run away from a treatment facility and allowed them to stay in his home for ten days. During this time, Beagle provided the two girls with drugs, repeatedly made sexual advances towards them, and sexually assaulted one of them.

¶4 Beagle pleaded guilty to attempted sexual assault and distributing a controlled substance to a minor. An evaluator from the Sex Offender Management Board ("SOMB") conducted an assessment using the Sexually Violent Predator Assessment Screening Instrument ("SVPASI"), which suggested that Beagle met the criteria of an SVP. In particular, Beagle's Sex Offender Risk Scale ("SORS") score was 34.8, more than twelve points over the threshold to be classified as an SVP. Colo. Dep't of Pub. Safety, Div. of Crim. Just., *2023 SVPASI Handbook: Sexually Violent Predator Assessment Screening Instrument* 10–15 (Oct. 2023), https://cdpsdocs.state.co.us/ors/docs/Risks/SVPASIHandbook.pdf [https://perma.cc/

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[2] In light of this disposition, we need not consider (1) Beagle's argument that the SVP designation is cruel and unusual as applied to him or (2) the People's argument that Beagle failed to preserve his Eighth Amendment claim.

5REY-K8AP] (“*SVPASI Handbook*”). The district court found that Beagle met the SVP criteria and designated him as an SVP. The court moreover found that the SVP designation “is not punishment” and instead that its “stated purpose is to protect the community.” The district court sentenced Beagle to a total of fifteen years in the custody of the Department of Corrections. Beagle appealed the district court’s order designating him as an SVP.

¶5 A division of the court of appeals affirmed, finding that the SVP designation was not “punishment” under the Eighth Amendment. *Beagle*, ¶ 24. The division rejected Beagle’s argument that *Allen*, ¶ 7, 307 P.3d at 1105—which stated that an SVP designation “is not punishment”—was abrogated by *People in Interest of T.B.*, 2021 CO 59, ¶ 73, 489 P.3d 752, 772—which held that mandatory lifetime registration as applied to juvenile sex offenders was cruel and unusual punishment. *Beagle*, ¶ 24. While the division stated that there was “arguable tension” between *Allen* and *T.B.*, it determined that *T.B.* did not “expressly overrule” *Allen* because the cases “d[id] not address the same issue.” *Beagle*, ¶¶ 23–24. Thus, the division applied *Allen* and held that Beagle’s SVP designation was likewise not punishment. *Id.* at ¶ 24. We granted Beagle’s petition for certiorari.

B. The "Sexually Violent Predator" Designation in Colorado

¶6 The SVP designation is a heightened classification of sex offender which carries the additional requirement of lifetime registration under the Colorado Sex Offender Registration Act ("CSORA"), §§ 16-22-101 to -115, C.R.S. (2025), and requires law enforcement to carry out additional community notification protocols. The SVP designation and its associated requirements draw from four different sources.

¶7 *First*, section 18-3-414.5, C.R.S. (2025), of the Criminal Code identifies the criteria for the SVP designation. To be designated as an SVP, an offender must (1) be eighteen years of age or older when the offense is committed; (2) be convicted of an enumerated sex offense or an attempt, solicitation, or conspiracy thereof; (3) have committed this offense against a victim who was a stranger to the offender or who was a person with whom the offender established or promoted a relationship primarily for the purpose of sexual victimization; and (4) be likely to commit another qualifying sex offense based on the results of the SVPASI. § 18-3-414.5(1)(a)(I)–(IV), (2).

¶8 *Second*, section 16-11.7-103, C.R.S. (2025), of the Code of Criminal Procedure creates the SOMB and delegates the creation of the SVPASI to this consultative body. The SOMB is comprised of twenty-five experts in "adult and juvenile issues relating to persons who commit sex offenses," including mental health

professionals, law enforcement, criminal defense attorneys, and judges, among others. § 16-11.7-103(1).

¶9 In cases concerning convicted adult sex offenders, a SOMB-trained evaluator administers the SVPASI, which is designed to identify sex offenders who are likely to commit another sexual assault. § 16-11.7-103(4)(d); *SVPASI Handbook*, at 1, 3. Using the SVPASI, an evaluator can find that an offender is likely to reoffend in one of three ways: (1) the offender has been previously convicted of at least one felony sex offense or two misdemeanor sex offenses; (2) the offender scores above a twenty-two on the SORS; or (3) the offender meets certain psychopathy or personality disorder criteria. *SVPASI Handbook*, at 10–15.

¶10 The SORS formula assesses the risk that sex offenders will have "a new sex or violent court filing within eight years of a conviction" for a qualifying SVP offense. *Id.* at 12. SORS predicts that those who score above a twenty-two on the assessment fall into a risk group with a 50–60% likelihood of reoffending.[3] *Id.* The SORS formula considers (1) the number of adult criminal cases filed; (2) the number of juvenile delinquency cases filed; (3) the number of cases with a revocation from probation or community corrections; and (4) the earliest sex

[3] The SORS formula relies on data from the Colorado Judicial Branch's ICON Case Management Information System. *SVPASI Handbook*, at 12.

offense filing age.[4] *Id.* at 12–13. The legislature has directed the SOMB to revise the SORS formula to accommodate updated research "as appropriate." § 16-11.7-103(4)(d)–(e).

¶11 After the evaluator completes the SVPASI, the district court uses the results as a "primary aid" to determine whether the offender qualifies for an SVP designation under the criteria in section 18-3-414.5(1)(a). *Allen*, ¶¶ 15, 17, 307 P.3d at 1107–08.

¶12 *Third*, CSORA features registration rules unique to those designated as SVPs. Once designated as an SVP, an offender is required to register every three months "for the remainder of [their] natural life," § 16-22-108(1)(d)(I), C.R.S. (2025), and they may not petition for removal from those requirements, § 16-22-113(3)(a), C.R.S. (2025).

¶13 *Fourth and finally*, the Code of Criminal Procedure delineates additional community notification procedures for SVPs. § 16-13-904, C.R.S. (2025); § 16-13-905(1), C.R.S. (2025). Because SVPs have been determined to pose a "high enough level of risk" to their communities, § 16-13-901, C.R.S. (2025), each local law enforcement agency must implement the SOMB's community notification protocols for any SVP who lives within its jurisdiction. §§ 16-13-904, -905(1).

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[4] "Score = (# Adult Cases x 2.1) + (# Juvenile Cases x 3.1) + (# Revocation Cases x 2.2) – (Earliest Sex Offense Filing Age x .23)." *Id.* (emphasis omitted).

Currently, these protocols require law enforcement to use either a town-hall style meeting, or alternative methods like social media, to provide community members with "relevant information" about SVPs living in their community. Colo. Dep't of Pub. Safety, Div. of Crim. Just., *SOMB Criteria, Protocols and Procedures for Community Notification Regarding Sexually Violent Predators* 13 (Apr. 2021), https://dcj.colorado.gov/sites/dcj/files/documents/SVP%20Criteria%20Protocols%20and%20Procedures%202021.pdf [https://perma.cc/RZR6-EXWJ] ("*SOMB Criteria, Protocols and Procedures for Community Notification*").

II. Analysis

¶14 We first lay out the appropriate standard of review in this case. Then, we summarize the legal principles for assessing whether a law constitutes punishment under the Eighth Amendment. From there, we assess the SVP designation's statutory features, applying *Ellingburg v. United States*, 146 S. Ct. 564 (2026), to find that the legislature did not *intend* the SVP designation to be punishment. Finally, applying the seven factors laid out in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963), we determine that the *effects* of the SVP designation are not so punitive that the scheme, by the "clearest proof," overrides this nonpunitive intent. In so doing, we hold that the SVP designation and its accompanying requirements do not constitute punishment under the Eighth Amendment.

A. Standard of Review

¶15 We review constitutional questions de novo. *Lucero v. People*, 2017 CO 49, ¶ 13, 394 P.3d 1128, 1131. We also review questions of statutory interpretation de novo. *Dubois v. People*, 211 P.3d 41, 43 (Colo. 2009). Statutes are entitled to a presumption of constitutionality; thus, under our separation-of-powers doctrine, we will not declare a statute unconstitutional without a showing that it is unconstitutional beyond a reasonable doubt. *T.B.*, ¶ 25, 489 P.3d at 760.

B. Legal Principles

¶16 The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.[5] The Colorado Constitution likewise bars "cruel and unusual punishments." Colo. Const. art. II, § 20. Evaluating whether a law constitutes "cruel and unusual punishment" requires us to determine if it imposes punishment in the first place. *Millard v. Camper*, 971 F.3d 1174, 1181 (10th Cir. 2020); *see also Ellingburg*, 146 S. Ct. at 566 (explaining that whether a measure is criminal punishment is a "threshold question" to a similar constitutional challenge under the Ex Post Facto Clause).

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[5] The Eighth Amendment is applicable to the states through the Fourteenth Amendment. *See, e.g.*, *Robinson v. California*, 370 U.S. 660, 666 (1962).

¶17 Whether a law imposes criminal punishment presents "a question of statutory construction" that requires a court to first "consider the statute's text and its structure" to determine whether the legislature *intended* the statute to be punitive. *Ellingburg*, 146 S. Ct. at 566–67 (quoting *Smith v. Doe*, 538 U.S. 84, 92 (2003)). If the "text and structure" demonstrate that the legislature intended "'to impose punishment,' that 'ends the inquiry.'" *Id.* at 568 (quoting *Smith*, 538 U.S. at 92).

¶18 However, even if a court determines that the legislature intended the statute to be nonpunitive, a measure may still be considered punishment if the challenging party establishes by the "clearest proof" that the measure's punitive *effects* outweigh this nonpunitive intent. *Id.* at 567 n.1 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997)); *Smith*, 538 U.S. at 92. Analysis of a statute's punitive effects has traditionally taken place via the seven factors laid out in *Mendoza-Martinez*. *See, e.g.*, *Smith*, 538 U.S. at 97.

C. Intent

¶19 Beagle maintains that the General Assembly intended for the SVP designation to be punishment because it is partially housed in the Criminal Code and does not otherwise have a legislative declaration espousing a nonpunitive

purpose.[6] Additionally, he argues that by placing the SVP designation "near" the section defining "[h]abitual sex offenders against children," § 18-3-412, C.R.S. (2025), the legislature communicated a punitive intent akin to this criminal sentence enhancement. Moreover, he contends that the SVP designation is "part of a criminal sentence," indicating punitive intent, because the SVPASI evaluation is conducted "as a part of the [presentence investigation]" and because the designation itself is entered on the mittimus.

¶20 Following oral argument here, the U.S. Supreme Court announced *Ellingburg*. Beagle submitted *Ellingburg* as a supplemental authority, deeming it relevant to his claim that the legislature intended for the SVP designation to be punishment. In *Ellingburg*, the Court analyzed the "text and structure" of the Mandatory Victims Restitution Act ("MVRA") and found that Congress intended the statute to be criminal punishment. 146 S. Ct. at 569. In so doing, the Court identified several statutory features of the MVRA which "ma[de] abundantly clear" that, when "viewed as a whole," the act imposed punishment. *Id.* at 567. These features included: (1) the MVRA "label[ing] restitution as a 'penalty' for a criminal 'offense'"; (2) restitution being imposed during sentencing; (3) the government, not the victim, being the party adverse to the defendant when

[6] The SVP statute itself does not include any legislative declaration. *See* § 18-3-414.5.

restitution is ordered; (4) allowing restitution for misdemeanors to be imposed "'in lieu of'" other punishments, such as imprisonment, making it the "sole punishment" for those offenses; (5) allowing noncompliance with restitution payments to result in a court modification of supervised release, probation, or even imprisonment; and (6) the MVRA being codified in the criminal code. *Id.* at 567–68 (quoting 18 U.S.C. § 3663A(a)(1)).

¶21 To be sure, the SVP designation scheme shares some of the statutory features identified by *Ellingburg*: the SVP designation is imposed at sentencing; the People remain an adverse party; the designation is located in the criminal code; and compliance with sex-offender registration is often a condition of probation or parole, so noncompliance could result in a modification of such terms.

¶22 But, the SVP designation definitively lacks the remaining two statutory features identified in *Ellingburg*: it is not labeled a penalty for a criminal offense, and it is not imposed "in lieu of" other punishments.

¶23 While the MVRA labeled restitution as a "penalty," *id.* at 567 (quoting 18 U.S.C. § 3663A(a)(1)), nowhere in the SVP scheme is the designation or any of its associated requirements labeled a "penalty." To the contrary, section 16-22-112(1), C.R.S. (2025), explicitly states that community notification under CSORA should not "be used to inflict retribution or additional punishment on any person." Moreover, the additional community notification requirements for SVPs

under sections 16-13-901 to -906, C.R.S. (2025), are accompanied by a clear legislative declaration emphasizing that such community notification "should only occur in cases involving a high degree of risk to the community" and should focus on "providing additional *information and education* to the community." § 16-13-901 (emphasis added). This indicates that the legislature intended the SVP designation to protect and educate communities, not punish offenders.

¶24 Additionally, the Court in *Ellingburg* explained that, per the MVRA, restitution may be imposed "'in lieu of'" misdemeanor punishments, "making restitution the sole punishment for a federal offense in certain circumstances." 146 S. Ct. at 567 (quoting 18 U.S.C. § 3663A(a)(1)). Not so with the SVP designation. Unlike the MVRA, there is no language in section 18-3-414.5 itself, nor in the relevant sentencing provisions, § 18-1.3-406, C.R.S. (2025), that allows a sentencing court to replace *any* portion of a defendant's sentence with the SVP designation.

¶25 *Ellingburg*'s "viewed as a whole" language implies totality of the circumstances review, 146 S. Ct. at 567, whereby this court should not seek to "mechanically tally" factors, *People v. McIntyre*, 2014 CO 39, ¶ 20 n.2, 325 P.3d 583, 588 n.2. Evaluating the statutory features identified in *Ellingburg*, we are particularly persuaded by the fact that the legislature did not label the SVP designation as a penalty and that it even made assurances to the contrary in two

different legislative declarations. Thus, when "viewed as a whole," the features of the SVP designation do not indicate punitive intent. *See Ellingburg*, 146 S. Ct. at 567.

¶26 Next, we turn to the seven *Mendoza-Martinez* factors to consider whether the punitive *effects* of the SVP designation sufficiently outweigh the legislature's nonpunitive intent.

D. Effects

¶27 In arguing that the SVP designation's punitive effects override any lack of punitive intent under *Mendoza-Martinez*, Beagle relies on our determination in *T.B.* that lifetime sex-offender registration for juveniles constituted punishment. *T.B.*, ¶ 43, 489 P.3d at 765. He contends that the effects of the SVP designation and its associated requirements are at least as punitive as the scheme in *T.B.*; meaning, the SVP designation is likewise punishment.

¶28 To analyze whether a measure is punitive in effect, courts have considered the seven factors articulated in *Mendoza-Martinez*; namely, whether a measure: (1) "involves an affirmative disability or restraint"; (2) "has historically been regarded as a punishment"; (3) "comes into play only on a finding of scienter"; (4) "promote[s] the traditional aims of punishment—retribution and deterrence"; (5) applies to behavior which is already a crime; (6) has "an alternative purpose to which it may rationally be connected"; and (7) "appears excessive in relation to

the alternative purpose assigned." 372 U.S. at 168–69. These seven factors are "'neither exhaustive nor dispositive,'" but are instead "'useful guideposts,'" that are "designed to apply in various constitutional contexts." *Smith*, 538 U.S. at 97 (first quoting *United States v. Ward*, 448 U.S. 242, 249 (1980); and then quoting *Hudson v. United States*, 522 U.S. 93, 99 (1997)).

¶29 We first compare this case to both *Allen* and *T.B.* and deem neither controlling. Then, we apply these *Mendoza-Martinez* factors.

1. Neither *Allen* nor *T.B.* Controls This Analysis

¶30 Beagle challenges the division's reliance on *Allen*, which stated that the SVP designation "is not punishment," ¶ 7, 307 P.3d at 1105, to hold that the SVP designation was not punishment; he points out that *Allen* did not involve an Eighth Amendment challenge and thus did not implicate the *Mendoza-Martinez* factors. Instead, Beagle compares his case to *T.B.*, which held that CSORA's lifetime registration and community notification requirements, as applied to juveniles, were punishment under *Mendoza-Martinez*. *T.B.*, ¶ 43, 489 P.3d at 765.

¶31 We agree that *Allen* is distinguishable. *Allen* considered whether a trial court had erred by designating an offender as an SVP even though the offender did not score high enough on the SVPASI to meet the criterion. ¶¶ 2–3, 307 P.3d at 1104–05. Thus, the issue in *Allen* was whether and to what extent trial courts may deviate from the SVPASI in making an SVP determination, not whether the

SVP designation was punishment under the Eighth Amendment. *Id.* at ¶ 5, 307 P.3d at 1105. So, we had no occasion to analyze the *Mendoza-Martinez* factors. Our remark in *Allen* that the SVP designation is not punishment is not dispositive.[7]

¶32 Turning to *T.B.*, although that case addressed a similar issue involving a juvenile, it does not control our conclusion here. In cases that walk through the seven *Mendoza-Martinez* factors, there will often be some tension between opinions due to differences between statutory schemes. Therefore, our analysis must not adopt, without examination, the conclusions of *similar* cases, such as that of *T.B.* Prior cases addressing similar statutory schemes, though instructive, are not binding, and we must instead conduct our own analysis of a measure's punitive effects using a consistent and thoughtful review of the seven *Mendoza-Martinez* factors.[8]

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[7] And, in fact, then-Justice Márquez noted in her concurrence in *Allen* that the issue of whether the SVP designation was criminal punishment "was not squarely raised" in that case, and so she would "simply assume, without deciding, that an SVP designation is not criminal punishment." ¶ 28 n.5, 307 P.3d at 1110 n.5 (Márquez, J., concurring in the judgment).

[8] We acknowledged as much in *T.B.*:

> The statutory schemes challenged in each of the three cases [cited by T.B.], much like the provisions of CSORA challenged by T.B., are materially different than the more limited registration requirements that the Supreme Court addressed in *Smith*. We thus cannot mechanically apply *Smith*'s holding and reasoning without accounting for these differences.

¶ 40, 489 P.3d at 764.

¶33 Upon review, we view *T.B.* as distinguishable for two reasons. First, *T.B.* analyzed lifetime sex-offender registration *as applied to juveniles*. ¶ 2, 489 P.3d at 755–56. Under the seventh *Mendoza-Martinez* factor, we deemed lifetime registration for juveniles excessive because it (1) "brands juveniles as irredeemably depraved based on acts committed before reaching adulthood," (2) disregards juveniles' "tremendous capacity" for reform, and (3) applies for a greater percentage of a juvenile's life by the "very fact of an offender's youth." *Id.* at ¶¶ 2, 32, 489 P.3d at 755–56, 762. We also judged inapposite *Smith*, in which the Supreme Court held that the sex-offender notification requirements at issue did not constitute public shaming because they involved the "dissemination of accurate information about a criminal record, most of which is already public." *T.B.*, ¶ 52, 489 P.3d at 767 (quoting *Smith*, 538 U.S. at 98). We emphasized that this rationale did not necessarily apply in the juvenile context, and so "[t]he dissemination of information about *juvenile* sex offenders thus appears more punitive in light of the presumptive confidentiality of most other juvenile adjudications." *Id.* (emphasis added).

¶34 Second, in *T.B.*, we determined that CSORA's automatic lifetime registration requirement for repeat juvenile offenders was retributive under the fourth *Mendoza-Martinez* factor because there was no individualized risk assessment. *T.B.*, ¶ 74, 489 P.3d at 772.

¶35 In contrast, here, the SVP designation applies only to adult offenders, § 18-3-414.5(1)(a)(I), whose conviction information is already a matter of public record. Moreover, the designation only applies to such offenders *after* the completion of an individualized risk assessment via the SVPASI. § 16-11.7-103(4)(d).

¶36 Therefore, neither *Allen* nor *T.B.* explicitly addressed the issue presented here: whether the SVP designation or its associated requirements is criminal punishment under the Eighth Amendment. The ultimate question remains whether the punitive effects of the law are so severe as to override the legislature's nonpunitive intent by the "clearest proof," an analysis we approach by weighing the seven *Mendoza-Martinez* factors.

2. The Seven *Mendoza-Martinez* Factors

¶37 Applying the seven *Mendoza-Martinez* factors to this case, we conclude that two of them weigh in favor of finding the SVP designation punitive, one is neutral, and four weigh against.

¶38 We begin with the two factors weighing toward punishment. First, as we acknowledged in *T.B.*, there are ways that the sex-offender registration and community notification programs here resemble a historical form of punishment—namely, public shaming and humiliation. ¶ 52, 489 P.3d at 767.

¶39 Specifically, Beagle maintains that community notification via a town-hall meeting resembles public shaming.[9] And, in its amicus brief, the American Civil Liberties Union of Colorado ("ACLU") takes issue with the alternative to a town-hall meeting most often employed by localities, where police departments publish the required information to their Facebook pages. The ACLU claims that this "functions as a state-sanctioned platform for the public to shame and threaten SVP-designated people" given that the comment sections "are filled with vitriol and threats."

¶40 Although we acknowledge this argument, we also note that it carries limited contextual weight. Public shaming is typically understood to involve confrontation that is both "direct" and "face-to-face," *Smith*, 538 U.S. at 98, yet nothing in the community notification statute mandates such face-to-face confrontation, *see* §§ 16-13-904, -905. In fact, SVPs are not to be permitted to attend the community notification meetings, *eliminating* the risk of any face-to-face confrontation. *SOMB Criteria, Protocols and Procedures for Community Notification*, at 49. Additionally, any shaming that occurs via "vitriol and threats" in the comment sections of social media posts is not *government sponsored*. The statute

[9] Beagle also argues that the SVP designation resembles "banishment" and "parole" under this factor. But his banishment argument focuses on municipal residency restrictions, the constitutionality of which is not before us. As for parole, we later address this vis-à-vis the "affirmative disability or restraint" factor.

only requires the SOMB to ensure that community notification occurs, § 16-13-904(2), and the SOMB itself provides municipalities with numerous options—including posting on social media—to provide that notice. The fact that some community members choose to leave these types of comments does not transform community notification into "public shaming."

¶41 Second, under the fifth *Mendoza-Martinez* factor, the SVP designation only applies to behavior that is already a crime, given that it is imposed on those who have been convicted of a sex offense. § 18-3-414.5(1)(a)(II).

¶42 As we mentioned, one factor is neutral to our analysis here: whether the law involves an affirmative disability or restraint. We recognize that the burdens of CSORA's registration requirements—in particular their lifetime span—impose certain restraints. But the U.S. Supreme Court has set a high bar for what constitutes an affirmative disability or restraint, generally comparing measures against the "'infamous punishment' of imprisonment." *Hudson*, 522 U.S. at 104 (quoting *Flemming v. Nestor*, 363 U.S. 603, 617 (1960)). In *Smith*, the Court found that Alaska's lifetime sex-offender registration requirements did not constitute an affirmative disability or restraint because they did not "resemble imprisonment, the paradigmatic affirmative disability or restraint." 538 U.S. at 86 (citing *Hudson*, 522 U.S. at 104). And, while Beagle argues that the designation resembles parole or probation, *Smith* distinguished parole or probation from Alaska's SVP

scheme—where offenders were "free to move where they wish and to live and work as other citizens, with no supervision." *Id.* at 87. Colorado's SVP scheme similarly does not restrict SVPs to the same degree as parole or probation.

¶43 The other arguments that Beagle makes regarding why he believes the SVP designation is an affirmative disability or restraint are unpersuasive. Namely, any threats to employment or housing are not removed in the absence of the SVP designation and registration scheme. These are collateral consequences stemming from the very nature of the underlying conviction. As the U.S. Supreme Court noted in *Smith*, both landlords and employers often conduct criminal background checks on prospective tenants and employees. *Id.* at 100. As we see it, "these consequences flow not from" the SVP designation, but "from the fact of conviction, already a matter of public record." *Id.* at 101. Thus, we see this factor as weighing, at most, neutrally in our analysis here.[10]

¶44 The remaining four *Mendoza-Martinez* factors definitively weigh against considering the SVP designation as punishment.

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[10] The constitutionality of municipal or federal restrictions on SVPs (e.g., residency constraints) is not before this court today. We are concerned only with the relevant Colorado state law regarding SVPs.

¶45 First, the SVP designation does not require a finding of scienter. The SVP designation is imposed based on the results of the SVPASI, which itself considers many factors, *see supra* Part I.B., but not, in any way, the intent of a defendant.

¶46 Second, the SVP designation's operation does not necessarily promote the traditional aims of "retribution and deterrence." *Mendoza-Martinez*, 372 U.S. at 168. Beagle argues that the SVP designation is retributive because it is imposed for life, meaning it is not tied to a "current or reevaluated individualized risk assessment" and is instead imposed as "retribution for a past offense."

¶47 But the fact that the SVP designation requires an individualized risk assessment in the first place strongly supports the conclusion that the designation is not retributive. In the context of sex offender statutory regimes, the existence of an individualized risk assessment makes it less likely that the scheme is retributive because such a tool seeks to measure the "danger of recidivism" rather than impose punishment based on the "'extent of the wrongdoing.'" *Smith*, 538 U.S. at 102 (quoting *Doe I v. Otte*, 259 F.3d 979, 990 (9th Cir. 2001)).

¶48 In *Smith*, the Supreme Court found that Alaska's sex-offender registration requirements, which differentiated between "individuals convicted of aggravated or multiple offenses and those convicted of a single, nonaggravated offense," were not retributive because they were "reasonably related to the danger of recidivism." *Id.* at 102. Likewise, in *Hendricks*, the Court concluded that a commitment

determination under Kansas's Sexually Violent Predator Act was not retributive even when it considered evidence of an offender's past sexually violent behavior because it "does not affix culpability for prior criminal conduct." 521 U.S. at 362. Instead, the Court noted that the Act considered past conduct explicitly for the purposes of determining "future dangerousness." *Id.* Similarly, Colorado's SVP designation scheme is *always* accompanied by an individualized risk assessment tool, the SVPASI, to determine an offender's "danger of recidivism" rather than to impose retribution.

¶49 Neither does the SVP designation sufficiently promote the traditional aim of "deterrence" as conveyed by the fourth *Mendoza-Martinez* factor. Given that "[a]ny number of governmental programs might deter crime without imposing punishment," the "'mere presence'" of a deterrent effect does not alone render a regulatory scheme punitive because this "'would severely undermine the Government's ability to engage in effective regulation.'" *Smith*, 538 U.S. at 102 (quoting *Hudson*, 522 U.S. at 105).

¶50 Beagle does not otherwise demonstrate that the SVP designation promotes "deterrence" of sexual assault. To begin, Beagle's reliance on the Colorado Bureau of Investigation's ("CBI") stated goal that sex-offender registration in general serves to further the "[d]eterrence of sex offenders for committing similar crimes," CBI, *Registration: Goals of the Sex Offender Registry*, https://apps.colorado.gov/

apps/dps/sor/information.jsf [https://perma.cc/7CUX-DWFP], is unavailing because CBI's identified goal related to sex-offender registration in general is not dispositive.

¶51 Furthermore, the SVP designation does not promote the traditional aim of deterrence when it advises community members about a potentially dangerous individual. Registration and community notification alert potential victims about an individual designated as an SVP. Thus, we see these measures as civil regulatory means principally designed to keep a community safe by ensuring that community members can take the steps needed to keep themselves safe.

¶52 Finally, both the sixth and seventh *Mendoza-Martinez* factors—whether a measure is rationally related to a nonpunitive purpose and is not excessive regarding that purpose—weigh against considering the SVP designation as punishment.[11] 372 U.S. at 168–69. In addressing these two factors, the issue is not whether the statute has a "close or perfect fit" with its nonpunitive purpose(s) or whether the legislature "has made the best choice possible to address the problem it seeks to remedy." *Smith*, 538 U.S. at 103, 105. The question is simply whether

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[11] The sixth and seventh *Mendoza-Martinez* factors are often discussed in tandem given that the concepts of rational connection and excessiveness are logically intertwined.

"the regulatory means chosen are reasonable in light of the nonpunitive objective." *Id.* at 105.

¶53 The legislative text associated with the SVP designation clearly indicates that this nonpunitive purpose is "community protection."[12] *See* § 16-22-112(1) (explaining that CSORA aims to provide the public "access" to information); § 16-13-901 (noting that SVPs pose a "high enough level of risk to the community" and that community notification is meant to spread "information and education to the community concerning supervision and treatment of sex offenders").

¶54 And, the designation and its associated registration and notification requirements are rationally related to community protection. They are tools that enable law enforcement to notify community members about those offenders who reside in close proximity to them and are deemed to have the highest risk of reoffending.

¶55 Moreover, the SVPASI is a comparatively well-developed individualized risk assessment tool strengthening the SVP designation's relationship to community protection and lowering the risk that it is excessive by sweeping up only those offenders deemed to have the highest risk of recidivism. Although

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[12] Beagle's arguments pointing to how the SVP scheme fails to improve offender well-being or encourage rehabilitation misinterpret the purpose of the SVP designation, which is community protection through education and notification, not through offender rehabilitation. *See* § 16-22-112(1); § 16-13-901.

Beagle argues that the SORS formula does not accurately assess the risk of recidivism on *sex* offenses (because it relies on *all* past criminal history) and otherwise provides no opportunity for reassessment, the SORS goes beyond the relatively minimal risk assessment imposed by Alaska's scheme, which the Supreme Court held was rationally related to "public safety." *Smith*, 538 U.S. at 87. Alaska's sex-offender registration scheme only differentiated between individuals convicted of multiple or aggravated sex offenses and those convicted of a single, nonaggravated sex offense. *Id.* Here, the SORS formula is an evidence-based assessment that considers (1) the number of adult criminal cases filed; (2) the number of juvenile delinquency cases filed; (3) the number of cases with a revocation from probation or community corrections; and (4) the earliest sex offense filing age. *SVPASI Handbook*, at 12; *see supra* Part I.B. Further, the SOMB reports that "fewer than five percent of those assessed with the SORS will score [twenty-two] or more." *SVPASI Handbook*, at 20.

¶56 While the ACLU and Beagle may raise legitimate concerns regarding the statistical accuracy of the SORS and SVPASI to identify those offenders with the highest risk of reoffending, we cannot cross into the policy-making powers of the legislature. The sixth and seventh *Mendoza-Martinez* factors contemplate only reasonableness, not statistical precision, and the SORS formula's reliance on *all* past criminal history—including violent offenses—to predict whether a person

will commit another sex offense is reasonable in part because sexual violence is likely to be underreported. *See, e.g.*, Nicholas Scurich & Richard S. John, *The Dark Figure of Sexual Recidivism*, 37 Behav. Sci. & L. 158, 158, 161 (2019). We are not tasked with assessing whether this approach is perfect, only whether it is reasonable.

¶57 Ultimately, although certain effects of the SVP designation may resemble punishment, they do not by the "clearest proof" outweigh the legislature's nonpunitive intent.

¶58 Because we determine that the General Assembly did not intend for the SVP designation to be punishment and the designation's punitive effects do not outweigh this nonpunitive intent by the "clearest proof," we hold that the SVP designation and its accompanying requirements do not constitute punishment under the Eighth Amendment.

III. Conclusion

¶59 For the foregoing reasons, we affirm the judgment of the court of appeals.

CHIEF JUSTICE MÁRQUEZ, joined by **JUSTICE GABRIEL**, specially concurred.

CHIEF JUSTICE MÁRQUEZ, joined by JUSTICE GABRIEL, specially concurring.

¶60 Although I join the majority's opinion, I write separately to highlight concerns with the sexually violent predator ("SVP") designation raised by Colorado's Sex Offender Management Board ("SOMB") that warrant the General Assembly's attention. In the nearly thirty years since it first became part of Colorado law, scientific research has called into question the effectiveness of the SVP designation in reducing recidivism and protecting the public. The SOMB agrees and has repeatedly recommended that the General Assembly eliminate the SVP designation and replace it with a system better aligned with modern research. Given these concerns, I respectfully urge the legislature to review the relevant research and consider whether the SVP designation continues to serve its intended purpose.

¶61 The SOMB is statutorily charged with creating and maintaining the standards for sex offender evaluation and treatment, as well as reviewing and reporting on the evolving science in this area. § 16-11.7-103(4)(e), C.R.S. (2025). In 2016, 2019, and 2022, the SOMB made formal recommendations to the General Assembly to eliminate the SVP designation entirely and replace it with a three-tier system based on an updated risk classification system that better aligns with modern research. Colo. Dep't of Pub. Safety, Div. of Crim. Just., *SOMB Annual Legislative Report: Evidence-Based Practices for the Treatment and Management of*

Adults and Juveniles Who Have Committed Sexual Offenses 31–33 (Jan. 2016) ("2016 Annual Legislative Report"), https://cdpsdocs.state.co.us/somb/resources/SOMB2016AnnualLegislativeReport.pdf [https://perma.cc/8LDX-KKS7]; Colo. Dep't of Regul. Agencies, Off. of Pol'y, Rsch. & Regul. Reform, *2019 Sunset Review: SOMB* 38–39 (Oct. 2019) ("2019 Sunset Review"), https://cdpsdocs.state.co.us/dvomb/SOMB/WN/2019sunset.pdf [https://perma.cc/P3EY-WRVD]; Colo. Dep't of Pub. Safety, Div. of Crim. Just., *SOMB Annual Legislative Report: Evidence-Based Practices for the Treatment and Management of Adults and Juveniles Who Have Committed Sexual Offenses* 26–28 (Jan. 2022) ("2022 Annual Legislative Report"), https://cdpsdocs.state.co.us/dcj/DCJ%20External%20Website/SOMB/Research.Reports/2022%20Legislative%20Report.pdf [https://perma.cc/T55L-7FJA].

¶62 A decade ago, in 2016, the SOMB noted that federal law had not required the use of the SVP designation since 2006, recommended the elimination of the SVP designation, and encouraged exploration of a process to "reassess . . . risk classification . . . based upon changes in [recidivism] risk over time." 2016 Annual Legislative Report, *supra*, at 32–33. These recommendations align with modern research showing that "sex offender recidivism risk declines substantially over time as individuals remain in the community offense-free." Jill S. Levenson, Melissa D. Grady & George Leibowitz, *Grand Challenges: Social Justice and the Need*

for Evidence-Based Sex Offender Registry Reform, 43 J. Socio. & Soc. Welfare 3, 9, 14, 19–20 (June 2016); *see also* Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 La. L. Rev. 509, 520–22 (2013) (collecting and summarizing a series of studies on recidivism rates among sex offenders).

¶63 Three years later, in 2019, the SOMB emphasized again that the SVP designation "is no longer accurate in the current system"; that "[c]urrent practice eliminates the term 'sexually violent predator'" altogether; and notably, that "the term may misrepresent the risk to the public and is therefore confusing to members of the community." 2019 Sunset Review, *supra*, at 38.

¶64 Most recently, in 2022, the SOMB stressed once again that a growing body of research has largely discredited classification systems like those in the SVP designation for two reasons: (1) they do not accurately assess a person's recidivism risk; and (2) mislabeling someone as higher risk than they actually are can increase the risk of recidivism by depriving individuals of strong social ties and stable housing and employment. 2022 Annual Legislative Report, *supra*, at 26–28*; see also* Kristen M. Zgoba & Meghan M. Mitchell, *The Effectiveness of Sex Offender Registration and Notification: A Meta-Analysis of 25 Years of Findings*, 19 J. Experimental Criminology 71, 90 (Sep. 2021) ("Maintaining low or reduced risk individuals on registries for a lifetime, or barring them from petitioning for termination, may promote collateral consequences in the form of housing

instability, employment instability, and internet bans, thereby further increasing their risk of reoffending."); Levenson, et al., *supra*, at 9 (explaining that "exclusionary practices activated by shaming labels can isolate stigmatized groups from mainstream social life, solidifying one's deviant identity and fortifying criminal behavior").

¶65 These consistent concerns flagged by the statutory body responsible for sex offender evaluation and treatment standards in Colorado raise important questions about whether the SVP designation continues to serve its intended purpose. Although I join today's opinion, I note these concerns and respectfully call the General Assembly's attention to them.