

LOCAL REGULATION OF SEX OFFENDERS

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Child Sex Offender Victims

- Megan Nicole Kanka – In 1994, Megan, 7 years old, was raped and murdered in New Jersey by a convicted sex offender who resided across the street.
- Amber Hagerman – In 1996, Amber, 9 years old, was abducted and murdered in Arlington, Texas in 1996

Child Sex Offender Victims

- Jessica Lunsford – In 2005, Jessica, 9 years old, was abducted and killed by a convicted sex offender.
- Adam Walsh – In 1981, Adam, 6 years old, disappeared from a department store. His body was found sixteen days later. No one has been convicted.

Trends In Regulations

- Private Entities
- Federal, State, and Local Laws
- Court Decisions

Trends in Regulations - Private Entities

- Six Flags Asserts Right to Refuse people convicted of sex crimes or anyone required to register as a sex offender. Has placed notice on season pass for each of its 30 U.S. parks.

NATHANIEL HERNANDEZ "Long-ago sex offender disputes threat of ban on Six Flags pass". Chicago Sun-Times. May 20, 2005.

Trends in Regulations – Private Entities

- Developers in Lubbock, Texas, Kansas City, Kansas and Canton, Georgia have banned or are planning on banning convicted sex offenders from living in homes located in their subdivisions.
- Developers have found that sex offenders are not a protected class under the Fair Housing Act. The U.S. Department of Housing and Urban Development have called this ban legal.

Trends in Regulations – Private Entities

- BETSY BLANEY “Subdivision bans sex offenders”. Chicago Sun-Times. June 13, 2005.
- LAURA BAUER “Houses off-limits to sexual predators”. The Kansas City Star. June 13, 2006.
- DAVID A. MARKIEWICZ “Ga – New homes not for sale to sex offenders”. The Atlanta Journal – Constitution. August 8, 2006.

Trends in Regulations – Federal Laws (Megan’s Law)

- Megan’s Law –
- 1994 – Adopted in New Jersey
- 1996 – Adopted as federal law
- Requires every state to create a procedure to notify the community of where convicted sex offenders live.

Trends in Regulations – Federal Laws (Megan's Law)

- Ex post facto issues raised, but law acknowledged as one to enhance public safety not and not to punish. Thus no violation.
- Megan's law was added to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (1994) which requires convicted sex offenders to register for 10 years.

Trends in Regulations – Federal Laws (AMBER Alert Act)

- AMBER Alert Act –
- 2003 - Became federal law
- Notifies general public of an abduction via radio stations, television stations, electronic traffic-control condition signals and various other media outlets.

Trends in Regulations – Federal Laws (Jessica Lunsford Act)

- Jessica Lunsford Act –
- 2005 – Adopted in Florida
- 2006 – Adopted as federal law as part of the Adam Walsh Child Protection and Safety Act.

Trends in Regulations – Federal Laws (Jessica Lunsford Act)

- States, in order to not have federal funds decreased, must require certain convicted sex offenders to wear a global positioning device (GPS) for 5 years after their release from prison if they have been convicted twice for failing to register as a sex offender or for 10 years if they have been deemed sexual predators.

Trends in Regulations – Federal Laws

(Adam Walsh Child Protection and Safety Act)

- Adam Walsh Child Protection and Safety Act
- 2006 – Adopted as federal law
- Created a national public sex offender registry.
- States must be consistent in the required information sex offenders must report.

Trends in Regulations – Federal Laws

(Adam Walsh Child Protection and Safety Act)

- Failure of convicted sex offender to register would be a state and federal felony.
- Convicted sex offender must register in person, not via mail.

Trends in Regulations – Federal Laws

(Adam Walsh Child Protection and Safety Act)

- Missing child report must be submitted within 2 hours into the FBI National Crime Information Center and may not be removed when child turns 18 years old unless child has been recovered.
- Increases number of Internet Crimes Against Children Task Force across the United States.

Trends in Regulations – State Law

- States that have enacted residency restriction statutes include:
Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Ohio, Oklahoma, Oregon, and Tennessee.

Levenson, Jill S. and Cotter, Leo P. "The Impact of Sex Offender Residence Restrictions: 1,000 Feet from Danger or One Step From Absurd?" *International Journal of Offender Therapy and Comparative Criminology*, 49(2), 2005, pp. 168-178.

Trends in Regulation – State Law

- Wisconsin adopted a state law that requires certain sex offenders to wear a GPS device for the rest of their lives.
- Arkansas, Georgia, Kansas, Michigan, Virginia, and Washington have similar laws.
- Texas is testing GPS technology.

WENDY KOCH "More sex offenders tracked by satellite." USA Today.
June 6, 2006.

Trends in Regulation – Local Laws

- Proposed Gilmer, Texas ordinance that would prohibit sex offenders "from working around or participating in events where children are involved...."

The Gilmer Mirror. September 18, 2006.
<http://www.gilmermirror.com/index.php?ArtID=12727>

Trends in Regulation – Local Laws

- Cuero, Texas ordinance, which passed in 2006, requires high risk sex offenders to place a yard sign announcing that a sex offender lives at that particular residence.

SONNY LONG "Yard signs for sex offenders". The Victoria Advocate. December 15, 2005.

LARA LOEWERSTEIN "Sex offenders deserve a second chance". Daily Bruin. March 9, 2006.

Trends in Regulation – Local Laws

- Child Safety Zone – ordinances that prohibit sex offenders from loitering in or around city parks solely or primarily intended for children.

ERICA CORDOVA "Parks may be off-limits to sex offenders". Laredo Morning Times. May 18, 2005.

LAREDO, TEX., CODE §23-8 (2005).

Trends in Regulation – Local Laws

- Residency Restrictions – ordinances that prohibit sex offenders from residing within an identified distance from areas where children congregate.

Whidden, Richard R., Jr. and Richards, Tiffany A. "Local Government Regulation of Sex Offenders: Addressing a Threat". National Law Center for Children and Families. <http://www.nationallawcenter.org/news/news/nlc-publishes-articles-on-local-sex-offenders-laws.html>

Trends in Regulation – Court Cases

- Residency Restriction Upheld:
Doe v. Miller, 405 F.3d 700 (8th Cir. 2005), cert. denied.
Iowa v. Seering, 701 N.W.2d 655 (Iowa 2005).
People v. Leroy, 828 N.E.2d 769 (5th Cir. 2005).

Trends in Regulation – Court Cases

- Prohibition of sex offenders from parks upheld:
Doe v. City of Lafayette, 377 F.3d 757 (7th Cir. 2004).
People v. Diestelhorst, 801 N.E.2d 1146 (Ill.App.3d 2003).
Brown v. Michigan City, 2005 WL 2281502 (N.D. Ind. 2005)

Texas Statutes

- CURRENTLY:
 - TEX. CODE CRIM. P. art. 42.12, Section 13B.
- PROPOSED:
 - Texas H.B. 1838 – Legislative Session: 79(R). Left pending in subcommittee 4/28/05.

Texas Statutes – Tex CCP, Art. 42.12, Sec. 13B

- TEX. CODE CRIM. P. art. 42.12, Section 13B – applies when “a judge grants community supervision to defendant”.
- The defendant is eligible if his/her offense is under particular sections of the Texas Penal Code.

Texas Statutes – Tex CCP, Art. 42.12, Sec. 13B

- Defendants are prohibited from entering “1,000 feet of premises where children commonly gather”. This is known as the “child safety zone”.
- Probation officer may allow defendant to enter child safety zone on “event-by-event basis”.

Texas Statutes - Proposed HB 1838

- Would amend Art. 62.03 of TEX. CODE OF CRIM. P.
- The sex offender would be required to “notify a law enforcement agency with jurisdiction over the public park of [his/her] presence”.
- Agency may provide a chaperon while person is in park.

Texas Statutes - Proposed HB 1838

- This law would apply to persons whose “offense or conduct [] was committed before, on, or after the effective date of this Act.”
- No ex post facto if law found to be non-punitive.

Texas Ordinances: Work Restrictions

- The proposed Gilmer, Texas ordinance that intends to restrict where sex offenders work or participate in events is not alone in this type of restriction.
- Tenn. Code Ann. 40-39-211 prohibits certain sex offenders from accepting employment within 1,000 feet of certain areas, such as schools.

Texas Ordinances: Yard Signs

- Texas cities such as Angleton, Alvin, Brazoria, Clute, Cuero, Danbury, Freeport, Jones Creek, Lake Jackson, Manvel, Oyster Creek, Richwood, Sweeny, and West Columbia have enacted ordinances that require certain sex offenders to place a sign in their front yard announcing they are sex offenders.

Texas Ordinances: Yard Signs

- BRIDGET BROWN "Lake Jackson approves sex offender ordinance". The Facts. May 04, 2006. <http://thefacts.com/print.lasso?ewcd=4572cc5b2352848b>
- BRIDGET BROWN "Danbury adopts sex offender ordinance". The Facts. August 12, 2006. <http://thefacts.com/print.lasso?ewcd=a04226c68010f984>
- SONNY LONG "Yard signs for sex offenders". The Victoria Advocate. December 15, 2005. <http://TheVictoriaAdvocate.com>

Texas Ordinances: Yard Signs

- The issue of requiring sex offenders to place yard signs came up as a condition of community supervision.
- Corpus Christi, 1997 – Judge Manuel Bañales ordered 15 sex offenders to place a sign reading "Danger, Registered Sex Offender Lives Here".
JOHN SPONG "The Judge, Judged". Texas Monthly. August, 2001.

Texas Ordinances: Yard Signs

- Attorney General's Office stated that Art. 42.12 of the Texas Code of Crim. P. allows judge to place conditions that are not unreasonable.
- Attorney General's Office reasoned that yard sign was not unconstitutional since it served rehabilitative purposes rather than being primarily punitive.

Texas ordinances: Yard Signs

- Op. Atty. Gen. 1997, No. DM-437
- "Sex-Offender Sign Cleared". The New York times. nytimes.com. April 13, 1997.
<http://query.nytimes.com/gst/fullpage.html?res=990DE5D91E3CF930A25757C0A961958...>

Texas ordinances: Residency Restrictions

- Laws restricting where sex offenders may live have been challenged and survived challenges.

Texas Ordinances: Residence Restrictions

- Issues raised during these challenges include:
- Due Process – Procedural, Substantive
- Fundamental Rights –
 - Right to personal choice regarding family
 - Right to travel
 - Right to live where you want

Texas Ordinances: Residency Restrictions

- Issues Continued:
 - Self Incrimination
 - Ex Post Facto
 - Cruel and Unusual Punishment

Residency Restriction

DUE PROCESS

Residency Restriction – Due Process: Procedural

- In *Doe v. Miller*, Doe claimed residency restriction violated procedural due process because of lack of notice. *Doe v. Miller*
- Lack of notice because statute not require individual determination of sex offender's level of risk. *Id.*

Residency Restriction – Due Process: Procedural

- Doctrine of Vagueness: statute must define criminal offense sufficiently for ordinary people to know what is prohibited and must not encourage arbitrary and discriminatory enforcement. *Id.*
- Doe further argued violation of procedural due process because as a result of the difficulty in ascertaining the location of all prohibited areas, that information could not be relayed to sex offenders. *Id.*

Residency Restriction – Due Process: Procedural

- Court disagreed. Court held no procedural due process violation since due process does not require independent enforcement of every statute by each county attorney with equal zeal. *Id.*
- Furthermore, due process not require individual hearings to establish a fact not essential under the statute. Due process does not require hearing to establish sex offender risk level. *Id.*

Residency Restriction – Due Process: Substantive

- Doe also argued the residency restriction violated substantive due process. *Doe v. Miller*
- Court held that since no fundamental rights were violated, substantive due process was not violated. *Id.*

Residency Restriction

FUNDAMENTAL RIGHTS

Residency Restriction – Right to Personal Choice Regarding Family

- Doe cited “marital privacy” in *Griswold v. Connecticut*, 381 U.S. 479, 485-86. *Doe v. Miller*.
- Doe also cited the zoning ordinance regarding family in *Moore v. City of East Cleveland*, 431 U.S. 494 (1977). *Id.*

Residency Restriction – Right to Personal Choice Regarding Family

- Court disagreed, holding no violation of right to personal choice regarding family since *Griswold* defined the terms regarding “intimate relation of husband and wife”, “intrusive regulation, and “family living arrangements”. *Doe v. Miller*
- Court also stated residency restriction did not limit who may live together as in *Moore*, and, furthermore, statute not operate directly on family. *Id.*

Residency Restriction – Right to Travel

- Doe claimed residency restriction interfered with the right to travel. *Doe v. Miller.*
- The court explained the two federal guarantees the right to travel protects:
 - Protection from actual barriers &
 - Protection from being treated differently. *Id.*

Residency Restriction – Right to Travel

- The Court further identified 3 components of the right to travel:
 - Right of citizens of states to enter and leave other states;
 - Right to be treated well as a visitor when visit is not permanent;
 - Right for visitor to become permanent resident, treated as other citizens of that state. *Doe v. Miller*.

Residency Restriction – Right to Travel

- The court held that there was no violation of the right to travel since
 - Statute not directly impair interstate movement &
 - Statute not treat nonresidents differently from residents.

Doe v. Miller.

Residency Restriction – Right to Live Where you Want

- Doe claimed the residency restriction violated the right to live where you want. *Doe v. Miller*.
- Court disagreed, citing *Prostrollo v. Univ. of S.D.*, 507 F.2d 775, 781 (8th Cir. 1974) where this court did not see the right to live where you want as a fundamental right. *Id.*

Residency Restriction – Right to Live Where You Want

- The *Doe v. Miller* court stated that Doe did not show the right to live where you want is “deeply rooted in this Nation’s history and tradition”. *Id.* (quoting *Moore*, 431 U.S. at 503).
- Thus, no violation of fundamental right since the right to live where you want is not a fundamental right.

Residency Restrictions

SELF-INCRIMINATION

Residency Restriction – Self-Incrimination

- Doe argued that the residency restriction violated the Self-Incrimination Clause of the Fifth Amendment. *Doe v. Miller*.
- The court disagreed, stating “the residency restriction does not compel a sex offender to be a witness against himself....” *Id.* No violation.

Residency Restriction

EX POST FACTO

Residency Restriction – Ex Post Facto

- Doe argued the residency restriction violates “ex post facto law because it imposes retroactive punishment on those who committed a sex offense prior to July 1, 2002. *Doe v. Miller*.
- The court explained that to determine if there was a violation of ex post facto law, it must be determined whether the law makers intended to establish a civil, nonpunitive law or criminal punishment. *Id.*

Residency Restriction – Ex Post Facto

- This court found that the law was created to protect the health and safety of society, to be a regulatory, non-punitive law. *Id.*
- The court explained that the residency restriction is not banishment since it did not prohibit sex offenders from accessing areas near schools, etc. *Id.*

Residency Restriction – Ex Post Facto

- The court also stated that though the residency restriction is intended to deter (reduce sex offender's temptation) "governmental programs might deter crime without imposing punishment." *Doe v. Miller* (citing *Smith v. Doe*, 538 U.S. 84).

Residency Restriction

CRUEL AND UNUSUAL
PUNISHMENT

Residency Restriction – Cruel & Unusual Punishment

- The court acknowledged Doe's contention that the residency restriction was cruel and unusual punishment just to the extent to state that since they found the residency restriction was not punitive, there was no violation of the Eighth Amendment.
Doe v. Miller.

Residency Restriction

STANDARD OF REVIEW

Residency Restriction – Rational Basis

- The court determined that the standard of review is rational basis.
Doe v. Miller.
- The court earlier discussed no fundamental right had been violated.
Id.

Residency Restriction – Rational Basis

- The court further found that based on expert testimony, “reducing the frequency of contact between sex offenders and children is likely to reduce temptation and opportunity, which... is important to reducing the risk of reoffense.” *Doe v. Miller*

Residency Restriction – Rational Basis

- The court found that the residency restriction, which would likely reduce sex offenders’ temptation to offend, was rationally related to the State’s interest in protecting the health and safety of its citizens.

See Doe v. Miller.

Texas Ordinances – Prohibition from Parks

- Laws banning certain sex offenders from entering parks have been challenged and survived.

Texas Ordinances – Prohibition from Parks

- The City of Laredo is one Texas city that has adopted an ordinance that prohibits sex offenders from loitering in or around city parks solely or primarily intended for children.

ERICA CORDOVA "Parks may be off-limits to sex offenders".
Laredo Morning Times. May 18, 2005.

LAREDO, TEX., CODE §23-8 (2005).

Texas Ordinances – Prohibition from Parks

LAREDO, TEX., CODE §23-8 (2005)

- was influenced by *Doe v. Lafayette*;
- based on 720 ILL. STAT. ANN. 5/11-9.4; and
- borrowed language from TEX. CODE CRIM. P. art. 42.12, Section 13B.

Texas Ordinances – Prohibition from Parks

- Several constitutional challenges were made by sex offenders who challenged 720 ILL. STAT. ANN. 5/11-9.4 (prohibiting certain sex offenders from approaching, etc. children in parks) and the banning of John Doe from the City of Lafayette parks.

People v. Diestelhorst

Doe v. City of Lafayette

Texas Ordinances – Prohibition from Parks

- Issues:
 - Fundamental Rights
 - Rational Basis Standard
 - Due Process
 - Right to Travel
 - Ex Post Facto

Texas Ordinances – Prohibition from Parks

- FUNDAMENTAL RIGHTS
 - No right to approach, contact or communicate with a child that is not his/her own. *People v. Diestelhorst*
 - Freedom of Speech not violated. *Doe v. Lafayette.*
 - Sex offenders not a protected class.

Texas Ordinances – Prohibition from Parks

■ RATIONAL BASIS STANDARD

- No fundamental right.
- Law narrowly tailored and had rational relationship to State's interest in protecting children.

People v. Diestelhorst

Doe v. City of Lafayette

Texas Ordinances – Prohibition from Parks

■ DUE PROCESS

- For due process clause to apply, challenger must establish that the prohibition deprives him of some liberty or property interest. *In the Matter of M.A.H.*, 20 S.W.3d 860, 864 (Tex.Ct.App. 2000)

Texas Ordinances – Prohibition from Parks

■ DUE PROCESS

- No liberty or property interest in approaching, contacting, or communicating with children that are not his own. *See id.*, 864-865.

Texas Ordinances – Prohibition from Parks

■ RIGHT TO TRAVEL

To infringe on the right to travel, the primary objective must be to impede travel or penalize the exercise of travel. *Ex parte William Matthew Robinson*, 80 S.W.3d 709, 715 (Tex.Ct.App. 2002).

Laredo ordinance was intended to protect children from sex offenders, not to impede travel.

Texas Ordinances – Prohibition from Parks

■ RIGHT TO TRAVEL

- The “constitutional right to the most convenient form of travel” does not exist. *Id.*
- “The right to travel is subject to reasonable regulation.” *Id.*

Texas Ordinances – Prohibition from Parks

■ EX POST FACTO

- Nonpunitive law intended to protect children from sex offenders.

Doe v. Miller.

Double Jeopardy – Since nonpunitive, not a crime, thus double jeopardy not apply.

Texas Ordinances – Prohibition from Parks

- Enforcement
 - Violation of ordinance
 - Criminal Trespass

- Community Reaction
 - Community
 - Sex Offenders

Local Regulation of Sex Offenders

THANK YOU!

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